

LOK SABHA
JOINT COMMITTEE ON THE PROTECTION
OF PLANT VARIETIES AND FARMERS'
RIGHTS BILL, 1999

REPORT OF THE JOINT COMMITTEE

(Presented to Lok Sabha on 25.8.2000)

(Laid in Rajya Sabha on 25.8.2000)



LOK SABHA SECRETARIAT
NEW DELHI

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THE JOINT COMMITTEE ON THE PROTECTION OF PLANT
VARIETIES AND FARMERS' RIGHTS BILL, 1999

COMPOSITION OF THE COMMITTEE

Sri Sahib Singh Verma

Chairman

MEMBERS

Lok Sabha

2. Dr. Baliram
3. Shri Ajay Chakraborty
4. Shrimati Kailasho Devi
5. Shri G. Putta Swamy Gowda
6. Shri Suresh Ramrao Jadhav
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13. Shri Sharad Pawar
14. Shri Nawal Kishore Rai
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17. Shri Shanker Singh Vaghela
18. Shri Ummareddy Venkateswarlu
19. Shri Mahboob Zahedi
20. Shri Nitish Kumar

Rajya Sabha

- *21. Dr. A.R. Kidwai
- @22. Dr. M.N. Das
- \$23. Shri Lalithbhai Mehta
- #24. Shri Kailash Joshi
25. Shri Yadlapati Venkat Rao
26. Prof. M. Sankaralingam
27. Shri Ranjan Prasad Yadav
28. Shri Balwant Singh Ramoowalia
- &29. Dr. Biplab Dasgupta
- %30. Shri N.R. Dasari

* Appointed w.e.f. 8.5.2000 vice Shri Janardhana Poojary retired
@ Appointed w.e.f. 8.5.2000 vice Shri V. Kishore Chandra S. Deo retired
\$ Appointed w.e.f. 8.5.2000 vice Dr. Ranbir Singh retired
Appointed w.e.f. 8.5.2000 vice Shri Onkar Singh Lakhawat retired
& retired on 2.4.2000 and reappointed w.e.f. 8.5.2000
% Appointed w.e.f. 8.5.2000 vice Shri Gurudas Das Gupta retired

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
2. Shri Ram Autar Ram — *Director*
3. Shri P.D. Malvalia — *Under Secretary*

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(DEPARTMENT OF AGRICULTURE & COOPERATION—SEEDS DIVISION)

1. Shri Bhaskar Barua — *Secretary*
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(LEGISLATIVE DEPARTMENT)

1. Shri N.L. Meena — *Joint Secretary and Legislative Counsel*
2. Dr. S.D. Singh — *Deputy Legislative Counsel*

REPORT OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

I, the Chairman of the Joint Committee to which the Bill* the Protection of Plant Varieties and Farmers' Rights Bill, 1999 was referred, having been authorised to submit the Report on their behalf, present this Report.

2. The Bill was introduced in the Lok Sabha on 14 December, 1999. The motion for reference of the Bill to a Joint Committee of both Houses of Parliament was moved in Lok Sabha on 21 December, 1999 by Shri Nitish Kumar, the Minister of Agriculture and was adopted by the House. (Appendix-I).

3. The Rajya Sabha concurred in the said motion on 22 December, 1999 (Appendix II).

4. The message from Rajya Sabha was published in Lok Sabha Bulletin Part-II dated 24 December, 1999.

5. The Chairman of the Committee was appointed on 29 December, 1999.

6. The Committee held 12 sittings in all.

7. At their first sitting held on 18 January, 2000 the Committee held general discussion on the various provisions of the Bill and referred to the importance and urgency of the task before the Committee. The Committee had also a briefing by the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation—Seeds Division) on the Bill under reference and the need to bring the proposed legislation. The Committee observed that the Bill dealt with a sensitive issue and required a deep study. The Committee then deliberated their future course of action and decided that a Press Communiqué might be issued in all the national dailies both in English and Hindi versions inviting therein memoranda from various State Governments, Agricultural Universities, Associations, Organisations, individuals etc., interested in the subject matter of the Bill. The Committee also desired that the contents of the Press Communiqué be given wide publicity through All India Radio and Doordarshan. The Chairman also requested the members to suggest the names of organisations, individuals, etc. from whom memoranda might be invited. The Chairman read the time schedule of the work of the Committee. The Committee felt that it would be difficult to complete the voluminous task of the Committee by the last day of the first week of the Budget Session of 2000. The Committee, therefore, opined that an extension of time might be sought from the House for presentation of their Report. The Committee also desired that they might undertake an on-the-spot study visit to various parts of the country to elicit the views of the representatives of various organisations, associations and general public on the various Clauses of the Bill.

8. Accordingly, a press communiqué inviting memoranda and requests for oral evidence was issued on 23 January, 2000.

9. As per decision taken by the Committee letters inviting Memoranda containing comments suggestions on the provisions of the Bill were also issued to all the State Governments/Union Territories Administrations, Vice-Chancellors of the Agricultural Universities in the country and individuals/experts on the subject whose names were furnished by the Ministry of Agriculture (Department of Agriculture & Cooperation—Seeds Division).

10. The Committee undertook study visits to Guwahati, Calcutta, Chennai and Mumbai from 9 to 13 February 2000; Bhopal on 4 March, 2000; Ahmedabad & Jaipur on 11 & 12 March, 2000; Ludhiana on 23 March, 2000; Hyderabad & Bangalore on 25 & 26 March, 2000; Hissar on 28 March, 2000; Pantnagar on 30 March, 2000; Bhubaneswar on 22 April, 2000; Trivandrum on 26 May, 2000 and Gangtok from 14 to 16 June, 2000.

11. The Report of the Committee was to be presented to the House by the last day of the first week of Budget Session i.e. by 25 February, 2000. But the Committee sought an extension of time for presentation of their Report till last day of the last week of Budget Session, 2000. The Committee could not complete the task

*Published in the Gazette of India, Extraordinary, Part-II, Section 2 dated 14 December, 1999.

by that time and, therefore, sought another extension of time to present their Report till last day of the Monsoon Session of 2000.

12. At their second sitting held on 24 March, 2000 the Committee heard the views of the representatives of the various farmers' associations/organisations/individuals etc., at Delhi on various Clauses of the Bill.

13. In all 132 Memoranda containing comments/suggestions on the various provisions of the Bill were received by the Committee from various associations/organisations and individuals etc. (Appendix III).

14. At their third sitting held on 19 April, 2000, the Committee took oral evidence of the representatives of farmers' organisations/associations/individuals etc., a list of organisations/associations/individuals who tendered their oral evidence before the Committee is enclosed (Appendix IV).

15. After considering a large number of suggestions received from various organisations, individuals etc. and hearing the oral evidences, the Committee felt that the Bill has very inadequate provisions for protecting the interest of the farmers. The Committee, therefore, redrafted the Bill providing therein a separate Chapter on farmers rights.

16. The original Bill as introduced in the House on 14 December, 1999 is enclosed (Appendix V).

17. At their fourth sitting held on 8 May, 2000 the Committee deliberated on the amendments proposed to the existing clauses of the Bill based on Memoranda received from various associations/organisations/individuals etc.

18. At their fifth sitting held on 20.7.2000 the Chairman of the Committee informed the members that taking into consideration a large number of Memoranda received from various associations/organisations/individuals and the view expressed during oral evidence tendered before the Committee at New Delhi and during study visits of the Committee in different parts of the country the changes which were in the interest of our farmers as well as our country have been made in the redrafted Bill. The Chairman also recalled that the Committee have to present to House their Report by the end of Monsoon Session, 2000.

19. At their sixth sitting held on 27 July, 2000 the Committee had a detailed discussion on the redrafted Bill in which the changes had been effected taking into consideration the large number of Memoranda received from various organisations/associations/individuals and the views expressed by the representatives of various associations/organisations/individuals etc. during their evidences tendered before the Committee in New Delhi as well as during the study visits of the Committee in different parts of the country. The Committee decided to hear some more oral evidences of various organisations on 3.8.2000.

20. At their sitting held on 22 August, 2000 the Committee decided that (i) the evidence tendered before the Committee might be laid on the Table of both the Houses of Parliament; and (ii) two sets of memoranda containing comments/suggestions on the various provisions of the Bill received by the Committee might be placed in the Parliamentary Library, after the report had been presented, for reference by the Members of Parliament.

21. The Committee considered and adopted the Report at their sitting held on 22 August, 2000.

22. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

23. *Clause 2:*— The Committee were told during the evidence tendered before them by the representatives of various farmers', organisations, associations, agricultural scientists and other agricultural experts at New Delhi and at the places wherever the Committee visited and held informal discussions, that the definitions of the words "breeder", "essentially derived variety", "extant variety", and "farmer" do not give clear expression and may create confusion and as such are needed to be elaborated.

Accordingly, the definitions of these words have been elaborated and made clear in the Bill as redrafted by the Committee and appended with this Report.

24. It was also felt necessary by the Committee that for clarity and meaningful expression of the Bill some more words like "Chairman", "Member", "member", "farmers' variety", "Judicial Member", "variety", "Tribunal" and "Technical Member" may also be added in this Clause and clearly defined.

Accordingly, these words have been defined in the Bill.

25. *Clause 3(5) (a):*— The Committee note that the Chairperson of The Plant Varieties and Farmers' Rights Protection Authority to be appointed by the Central Government shall be a person of outstanding calibre and eminence in the field of Plant Varietal Research or in the related field of agricultural development and having not less than 25 years of practical experience in either field. The Committee is not satisfied with the qualification of the Chairperson prescribed in the Bill. The Committee recommend that the Chairperson to be appointed by the Central Government shall be a person of outstanding calibre and eminence with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.

Accordingly, Clause 3 (5) (a) has been amended.

26. *Clause 3(5) (b):*—The Committee were told by witnesses that in the "Plant Varieties and Farmers' Rights Protection Authority" most of the members are officials of the Government of India. It was suggested that the representatives of the National or State level farmers' organisations, tribal organisations, seed industry, agricultural university, National or State level women organisations and State Government may be inducted in the "Authority". The Committee, therefore, recommend that one representative from each of the National or State level farmer's organisations, tribal organisations, seed industry, agricultural university, National or State level women organisations associated with agricultural activities and two representatives of the State Government on rotation basis may be nominated by the Central Government so as to make the Authority more viable and responsive.

Accordingly Clause 3(5) (b) has been amended.

27. *Clause 3 (4):*—Consequently, the number of members of the "Authority" has been raised to 15 excluding the Chairperson.

28. *New Sub-Clause 3(7):*—The Committee feel it necessary that for the efficient functioning of the Authority the Chairperson shall appoint a Standing Committee consisting of 5 members, one of which shall be a member who is representative from the farmers' organisation to advise the Authority on all issues including the farmers' rights.

Accordingly, a new sub-clause 3 (7) has been added and subsequently Sub-Clause 7,8,9 have been re-numbered as 8,9 and 10.

In clause 3(8) as so renumbered, the provision of allowances payable to the non-official members has been made for attending the meetings of the "Authority".

29. *Clause 4(1):*—Consequently, the words "Standing Committee appointed in sub-section 7 of Section 3" have been inserted.

30. *Clause 8*

New Sub-Clause (2) (c) & (d):— The Committee feel that the Authority should not only take the measures of developing characterisation and documentation of varieties registered under this Act to promote, encourage and develop the new varieties of plants and protect the rights of the farmers and breeders but the measures like documentation, indexing and cataloguing of farmers' varieties and compulsory cataloguing facilities for all varieties of plants should also be adopted.

Accordingly, the provisions have been made by inserting new sub-clauses 8 (2) (c) and (d) and original sub-clauses (d), (e) and (f) have been subsequently renumbered as (e), (f) and (g).

31. *Clause 8 (2) (f) as so re-numbered:*—The Committee feel that this sub-clause should be made more specific and recommend that this sub-clause should include the contribution of any person at any time in the evolution or development of any plant variety in India or any other country.

Accordingly, it has been amended suitably.

32. The Committee note that the whole Chapter II deals with "The Plant Varieties and Farmers' Rights Protection Authority" but the powers of the Authority and the Registrar have been mentioned in a separate Clause 23 of Chapter VII of the original Bill. The Committee, therefore, brought back the powers of the Authority and that of the Registrar in Chapter II.

Subsequently, original clauses 11 to 22 have been renumbered as Clauses 12 to 23.

33. The Committee amalgamated Chapter III of the original Bill with Chapter II of the redrafted Bill dealing with the Registry, Registration of Varieties and Conditions of Registration.

Subsequently Chapter IV of the original Bill has been re-numbered as Chapter III of the redrafted Bill.

34. *Chapter III as so re-numbered*—Chapters V and VI of the original Bill have been amalgamated in this Chapter of the redrafted Bill.

Consequently, Chapters VII, VIII of the original Bill have been renumbered as Chapter IV and V of the redrafted Bill.

35. *Chapter V as so re-numbered*—In this Chapter, original Chapter IX has been merged.

36. *Clause 14 as so re-numbered*—For making an application to the Registrar for registration of any variety by a person specified under Section 16, the Committee feel that he can apply for registration of a variety of such genera and species as specified under sub-section 2 of Section 29 or extant variety or farmers' variety.

Accordingly, Clause 14 has been amended.

37. *Clause 15 as so re-numbered*

(i) *New Item (2)*—The Committee are not satisfied with the proviso to Clause 14 (i) of the original Bill that an extant variety shall be registered even if it does not conform to the criteria of novelty. The Committee, therefore, recommend that an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under regulation made by the Authority. Accordingly, the proviso to sub-clause (1) of Clause 14 of the original Bill has been deleted and a new sub-clause 2 has been added. Clause 2 of the original Bill has also been deleted.

38. *Clause 16 as so re-numbered*

New Item (1) (d) & (f)—The Committee recommend that not only a person claiming to be the breeder of the variety, any successor of the breeder of the variety, any person being the assignee of the breeder of the variety in respect of the right to make an application for registration under Section 14 of the redrafted Bill but also any farmer or group of farmers' or community of farmers claiming to be the breeder of the variety and any University or publicly funded agricultural institution claiming to be the breeder of the variety may make an application for such registration.

Accordingly, new sub-clauses (d) and (f) have been added and sub-clause (d) of the original Bill has been renumbered as (e) with consequential modifications.

39. *Clause 18 as so re-numbered*

Item (e)—The Committee recommend that while making an application for registration under Section 14, the application alongwith the other criteria as specified shall contain a complete passport data of the parental lines from which the variety has been derived alongwith the geographical locations in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organisation in breeding, evolution or developing the variety.

Item (e) of the original Bill has accordingly been amended suitably and items (f) and (g) of the original Bill have been renumbered as items (e) and (f) respectively.

40. *New item (h)* The Committee recommend that it should be provided that every application for registration under Section 14 shall also contain a declaration, that the genetic material or parental material acquired for the breeding, evolving or developing the variety has been lawfully acquired.

Therefore, a new item (h) has been added in clause 18 (1) of the revised Bill. Original item (h) has been re-numbered as (i).

41. *Item (i) as so re-numbered*—The Committee also recommend that sub-clause (i) shall also be made more specific and it should be provided that in case where the application is for the registration of farmers' variety, nothing contained in clause (b) to (i) shall apply in respect of the application and the application in such form as may be prescribed.

Accordingly, a proviso has been added to sub-clause (1) (i) of Section 18.

42. *Clause 19 (1) as so re-numbered:*—The Committee note that in the Original Bill it has been stated that every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantities of seeds of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether such variety along with parental material conform to the standards as may be specified by regulations. But the Committee feel that it should be made more meaningful and specific. The Committee, therefore, recommend that a proviso should be added to Clause 19(1) that the Registrar or any person or test Centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

Accordingly, a proviso has been added to this clause suitably.

43. *Clause 21 as so re-numbered*

New Item (3) (d)

The Committee feel that besides other grounds for opposition to the registration of a variety under Sub-section (2), it should also be provided that the variety may have adverse effect on environment.

Accordingly, a new item 21 (3) (d) has been added.

44. *Chapter IV as so re-numbered:*—Since the Original Clause 3 relating to "Powers of Authority and Registrar" has been assimilated in Chapter II under Clause 11, the heading of this Chapter has accordingly been changed as "Duration and Effect of Registration and Benefit Sharing."

45. *Clause 24 (2)*

The Committee note that for issuing a Certificate of Registration of a variety (other than an essentially derived variety) by the Registrar no time limit has been prescribed nor anybody has been authorised for fixing the time limit for its issue. The Committee, therefore, recommend that there should be a time limit for issuing the Certificate of Registration from the date of filing of the application which should be prescribed by the Authority.

The provision has, therefore, been made under sub-clause (2) of Section 24 accordingly.

46. *Clause 24 (6):*—The Committee are not satisfied with the period of three years prescribed for validity of the Certificate of Registration after its issue. The Committee therefore recommend that Certificate of Registration issued under Sub-section (8) of Section 23 shall be valid for nine years in the case of trees and vines; six years in the case of other crops and may be reviewed and renewed for the remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the conditions specified in items (i) to (iii) of this Sub-Section.

Accordingly, Sub-Section (6) of Section 24 stands amended.

47. *Clause 27*

New Item (2):—As regards breeder to deposit seeds or propagating material the Committee recommend that the breeder shall be required to deposit such quantity of seeds or propagating material or parental line seeds under sub-section (1) in the National Gene Bank specified by the Authority.

Accordingly, new item (2) in clause 27 has been added.

48. *Clause 29*

Item (3) :—Clause 14 (2) of the original Bill has been effected here with consequential modifications and explanations. Subsequently items (3) and (4) of the original Bill has been re-numbered as items (4) and (5) respectively with some modifications. Item (5) of the original Bill has been deleted.

Item (2) :—Amendments made are of consequential nature.

49. *Clause 34:*—The Committee deliberated on this Clause at length and decided to delete the whole clause so that rights of the farmers' could be saved.

Accordingly, it has been deleted.

50. *Clause 34 (4) as so renumbered :*—As regards the surrender of Certificate of Registration by the breeder of a variety, the Committee recommend that if the Registrar is satisfied after hearing the applicant and all the opponents if desirous of being heard that the Certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

Accordingly, it has been amended suitably.

Consequential Changes

Original Clauses 35 to 40 have been re-numbered as Clauses 33 to 38.

51. *Clause 36 (1) as so re-numbered* :— As regards the payment of annual fee the Committee recommend that the Authority may impose a fee to be paid annually by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

Accordingly, it has been amended suitably.

52. *New Chapter VI* :— During evidence tendered before the Committee by the representatives of the various farmers' organisations, associations, individuals, experts etc. and wherever the Committee visited in the country and held informal discussions with different agricultural groups, scientists and individuals, it was unanimously opined that though the Bill seeks to protect the farmers' rights but only a very little has been provided for the farmers' in the Bill. The Committee were requested to have a separate chapter on farmers' rights.

53. It was also suggested that the farmer may also be entitled for the registration and other protection in like manner as a breeder of a variety is entitled in respect of the variety under this Act. It was also suggested that the farmer who is engaged in the conservation of genetic resources to land races and wild relatives of economic plants and their improvement through selection and preservation, shall be entitled in the prescribed manner for recognition and reward from the National Gene Fund. He shall also be entitled to save, use, sow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before coming into force of this Act provided that he shall not be entitled to sell branded seed of a variety protected under this Act.

54. It was also opined that where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions as the farmer or the group of farmers or the organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority shall after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, it may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.

55. It was further suggested that any person or group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government by the Authority in the Official Gazette, any claim attributable to the contribution of the people of that village or local community as the case may be in the evaluation of any variety for the purpose of staking a claim on behalf of such village or local community. If after due verification of the claim, the Authority is satisfied with the claim, it may issue notice in the prescribed manner to the breeder of that variety for filing any objection. If the breeder is not able to satisfy the Authority a sum of compensation would be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (1) to the Authority as it may deem fit. The compensation to be given shall be deposited by the breeder of the variety in the Gene Fund.

56. It was also suggested that a right established under this Act may not be deemed to be infringed by a farmer who at the time of such infringement was not aware of the existence of such right. It was thought that a relief which a Court may grant in any suit for infringement referred to under Section 66 shall not be granted by such Court nor any cognizance of any offence shall be taken for such infringement by any court against a farmer who proves before such court that at the time of infringement he was unaware of the right so infringed.

57. About the authorisation of the farmers' variety, the Committee was suggested that where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section 1 of Section 28 may not be given by the breeder of such farmers' variety except with the consent of the farmer or group of farmers' or community of farmers' who have made contribution in the preservation or development of such variety.

58. As regards fee, it was suggested that a farmer or a group of farmers or community of farmers shall not be liable to pay any fee in any proceeding before the Authority or the Registrar or the Tribunal or the High Court under this Act and rules made thereunder. The fee for any proceeding includes any fee payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or rules made thereunder.

59. The Committee discussed the aforesaid suggestions at length and recommended that a new Chapter on Farmers' Rights should be added in the Bill separately.

60. Accordingly, a separate Chapter VI on Farmers' Rights has been included in the revised Bill from Clauses 39 to 46.

Consequential changes

- (i) Original Clause 31 - deleted.
- (ii) Original Clauses 32 and 33 have been re-numbered as 31 and 32 respectively.
- (iii) Original Clauses 41 to 47 have been re-numbered as 47 to 53.
- (iv) Original Clause 52 has been deleted.
- (v) Chapter X has been re-numbered as Chapter VII.
- (vi) Original Clauses 53 to 89 have been re-numbered as 60 to 96 respectively.

61. *Clause 51(1)(i) as so re-numbered* :—The Committee note that in the original Bill it has been provided that the Authority shall, while determining the terms and conditions of a compulsory licence, endeavour to secure reasonable royalty and other remuneration to the breeder of the variety. But the Committee recommend that "reasonable compensation" would be sufficient instead of the words "reasonable royalty and other compensation."

Accordingly, it has been amended suitably.

62. *New Chapter VIII* :—The Committee note that in original Bill only the High Courts were authorised to hear the appeals as against the orders or the decisions of the Authority or Registrar or the Tribunal. The Committee feel that if the High Courts are authorised for this purpose there would be a large number of cases pending before them. The Committee, therefore, recommended for constitution of a Tribunal to hear the appeals so as to dispose of the appeal cases quickly. However, the aggrieved person can approach High Court/ Supreme Court for redressal of his grievance if he is not satisfied with the decisions of the Authority or the Registrar or the Tribunal.

63. The Central Government may by notification in Official Gazette establish a Tribunal to be known as the Plant Varieties Protection Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

64. As regards the composition of the Tribunal the Committee recommend that the Tribunal shall consist of a Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit. About the qualifications of a Judicial Member, the Committee recommend, that he should have at least ten years experience of judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade II of that service or any equivalent or higher post for at least three years or who has been an advocate for at least twelve years and in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law and in computing the period which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

65. Regarding the Technical Member of the Tribunal the Committee recommend that he should be a person who is an eminent agricultural scientist in the field of plant breeding and genetics and possesses an experience of at least 20 years to deal with plant variety or seed development activity, or who has held the post in the Central Government or State Government dealing with plant variety or seed development equivalent to the Joint Secretary to the Government of India for at least three years and possesses the special knowledge in the field of plant breeding and genetics.

66. The Committee also recommend that the Central Government shall appoint a Judicial Member of the Tribunal to be the Chairman thereof and it may appoint one of the members of the Tribunal to be the Senior Member thereof. The Senior member or a Member shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

67. The Committee further recommend that an appeal should be preferred to the Tribunal within a prescribed period from any order or decision of the Authority or Registrar, relating to registration of a variety; or registration as an agent or a licensee of a variety or determining the benefit sharing by the Authority; order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or order or decision of Authority regarding payment of compensation, made under this Act or rules made thereunder or any other or decision of the Authority. Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed. Such Tribunal in disposing of an appeal shall have powers to make any order which the Authority or the Registrar could make under this Act. In every appeal, the Tribunal, where it is possible, hear and decide such appeal within a period of one year from the date of filing the appeal.

68. The Committee in this regard also recommend that the Tribunal, may, after passing an order, at any time, within 30 days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (1) and shall make such amendment if the mistake is brought to its notice by the Appellant or the opposite party.

69. The Committee also desire that the powers and functions of the Tribunal, may be exercised and discharged by Benches constituted by the Chairman of the Tribunal from amongst the Members thereof.

70. The Committee recommend that notwithstanding anything contained in this Act, till the establishment of the Tribunal under Section 54, the Intellectual Property Appellate Board established under Section 83 of the Trade Marks Act, 1999 shall exercise the jurisdiction, powers and authority conferred on the Tribunal under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purpose of this Section, for the Technical Member referred to in sub-section (2) of Section 84 of the Trade Marks Act, 1999, the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section (2) of section 84 for the purpose of this Act.

Accordingly a separate Chapter VIII on Tribunal from Clauses 54 to 59, has been incorporated in the Redrafted Bill of the Committee.

Consequential Changes

- (i) Original Chapter XI — amalgamated in Chapter VIII of the redrafted Bill on Tribunal.
- (ii) Original Chapter XII — amalgamated in Chapter VI of the redrafted Bill on Farmers' Rights.
- (iii) Original Chapter XIII — Renumbered as Chapter IX in the redrafted Bill.
- (iv) Original Chapter XIV — Renumbered as Chapter X alongwith change in heading in the redrafted Bill.
- (v) Original clauses 53 to 88 have been renumbered as clauses 61 to 96.

71. *Chapter X as so re-numbered* :—The Committee feel that there was no need of having separate Chapter XV in the original Bill on Offices, penalties and procedure because their purposes can well be served by merging them in Chapter X in the redrafted Bill on infringement, offences, penalties.

72. *Clause 65 (2) as so re-numbered* :— The Committee note that it has been provided that no suit for the infringement of a variety registered under this Act or relating to any right in a variety registered under this Act shall be instituted in any court inferior to a District Court having jurisdiction to try the suit. The Committee feel that the jurisdiction of the District Court should be defined properly and recommend that "District Court having jurisdiction" shall mean the District Court within the local limit of whose jurisdiction the course of action arises.

Hence, it has been amended suitably.

73. *Clause 66 (2) (c) as so re-numbered* :— The Committee note that it has been provided that relief which a court may grant in suit for infringement referred to in Section 66 includes an injunction and at the option of the plaintiff, either damages or a share of the profit. About injunction, the Committee recommend that it should also include besides other matters, attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff. Accordingly, it has been amended suitably.

74. *Clause 70 as so re-numbered*—The Committee recommend to have a provision in the Act that if any person who applies for any false denomination to a variety or indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in course of trading such variety, shall, unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years or fine which shall not be less than fifty thousand rupees but which may extend to 5 lakh rupees or both.

Accordingly Clause 73 has been amended.

75. *Clause 71 as so re-numbered*—The Committee recommend that in the cases of penalty for selling varieties to which a person is not authorised to which false denomination is applied by him, there should be a provision of imprisonment for a term which shall not be less than six months but which may extend to two years or a fine which should not be less than Rupees fifty thousand but which may extend to Rupees five lakh or both.

76. *Clause 72 as so re-numbered*—The Committee recommend that in the cases of penalty for falsely representing a variety as registered, there should be provision of imprisonment for a term, which should not be less than six months and may extend to three years or with fine which shall not be less than one lakh Rupees but which may extend to five lakh rupees or both.

77. *Clause 73 as so re-numbered*—The Committee also recommend that in the cases of subsequent offence there should be a provision of imprisonment for a term which shall not be less than one year but which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees or both.

78. *Long title of the Bill*: Since the Committee have redrafted the Bill, the Long Title of the Bill has accordingly been modified.

79. *Clause 1*: The amendment made in this Clause is of a formal nature.

80. *Enacting Formula*: The amendment made in the enacting formula is of formal nature.

NEW DELHI;
21 August, 2000

30 Sravana, 1922 (Saka)

SAHIB SINGH VERMA
Chairman
Joint Committee on the Protection
of Plant Varieties and Farmers'
Rights Bill, 1999.

MINUTES OF DISSENT

(I)

This Bill has been drafted under the obligation of Art. 27-3(b) of the TRIPS. The article of the WTO/ TRIPS requires a *Sui generis* system for plant varieties. Art. 27-3(b) of TRIPS states:—

“Parties may exclude from patentability of plants and animals other than micro organisms, and essentially biological processes for the production of plants or animals other than non-biological and micro-biological processes. However parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by a combination thereof. This provision shall be reviewed four years after the entry into force of the Agreement establishing WTO”.

The 1999 PVP Bill based on the Union for the Protection of New Plant Varieties (UPOV) 1978 model. The Government of India has been consistently pressurised to sign UPOV convention, which merely safeguards the interest of the industrialised nations and their monopolistic Seeds Corporations. The UPOV 1978 and the 1991 models are both grossly inappropriate for India because here farmers are breeders. UPOV does not recognise or protect farmers' rights as positive rights and does not recognise farmers as breeders. UPOV only recognise them as producers.

In our country where farmers have bred thousands of varieties and still continue to do so, a PVP law based on UPOV model would negate their contribution.

The TRIPS text should not be interpreted as requiring the UPOV system of breeders rights as the only *Sui generis* options. Further, it is totally misleading to suggest that acceding to UPOV 78 means avoiding UPOV 91. Firstly, all industrialised countries have already introduced UPOV 91 consistent laws at national level. Therefore, if India accepts industrialised country standards for plant variety protection, then it will be the 91 standard that will be demanded by the industrialised countries. Further more, the draft act has in any case introduced core elements of UPOV 91, e.g. the category of essentially derived varieties. The UPOV system in any case is totally inappropriate for us since it has been evolved in the context of the industrialised countries. It is not suited to our conditions of peasantry, in which 80 per cent of seed supply is still farmers' seed supply.

Through the present PVP Draft Bill, the multinational seed organisations are seeking total control of seed being the first link in food chain. Through control over seed, they want to control the food system. With this the farmers who are original breeders could be forced into market every year. Thus seed industry will have a 7.5 billion US Dollars market according to a rough estimate.

The impact of the new seed laws to be assessed in the context of monopolies already there in places in industrialised countries.

The PVP Bill would prove to be an effective tool through which the consolidation of seed companies over Indian Agriculture would be accomplished. “MONSANTO” (Multinational Seed Company) official Robert Farley has stated “What you are seeing is consolidation of entire food chain.”

The TRIPS agreement of the WTO is the global instrument that the biotech industry has used for monopoly control over seed supply.

70 per cent of the seed supply is still farmers' seed supply in our country. In most industrialised countries, most farmers depend on the seed industry.

The Draft Bill tries to spell out so-called “Farmers' Rights” but in fact it has nothing which provides protection of farmers' rights.

Honestly reviewing, one finds the proposed Bill, farmers as breeders and innovators of indigenous varieties have completely negated and they are only recognised as cultivators in the Bill. Our farmers are cultivators, breeders and conservers and they breed thousands of indigenous varieties of wheat, paddy and other crops with the help of local communities. This draft Bill completely denies them their right as breeder.

The right to save, use, exchange and sell farm saved produce as propagating material are unalienable rights of our farming community and local communities and this should be aggressively recognised by Protection of Plant Varieties and Farmer's Rights Bill, 1999.

However, what the farmer can not do, according to the new law, is sell seed. And this is really the most devastating blow to the rights that farmers have today. According to Section 31 the farmer is not entitled to sell any part of his farm produce for reproduction, that is for the purpose of seed. Any lawyer will tell you and Gene Campaign has consulted them, that prohibiting sale of seed under 'commercial marketing arrangement' means a complete denial of the right to sell, whether the sale is of one kilogram or 1000 kilograms. It is clear that under the new law sale of seed is prohibited to the farmer.

The farmer having the right to sell seed is an essential component of our food security and simply cannot be trifled with. The consequences of denying the farmer the right to sell will lead to impoverishment and dependence for farming communities. It will also affect on national security in a quite dangerous way.

The denial of the right to sell seed will lead to loss of income for the farmer. Far more worrying is that it will lead to the farming community losing control over seed production. This will ultimately threaten self-reliance in agriculture. There is a real danger that farmers could become dependent on multinational seed companies for seed supply, with all the implications that this could have.

What are the implications for India of these curtailed farmers' rights? The short answer to that is, a compromise with national security. Food security, as we are all aware, is a critically important part of national security. A nation that does not produce its own seed and its own food cannot be a secure nation.

Today India plants over 60 lakh tonnes of seeds every year into its fields. The National Seeds Corporation and the various State seed corporations together produce less than 15 per cent of this requirement. Over 85 per cent of the seeds amounting to roughly 52 lakh tonnes, that are planted in India fields every year are supplied by the farming community. In other words, India's largest seed producer is the Indian farmer.

The multinational seed corporation is also trying to launch genetically engineered seeds which are being rejected by many countries around the globe including Africa and Europe. The Joint Parliamentary Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 should think all these points carefully and should not be in a hurry to clear it.

New Delhi:
Date: 22.8.2000

N.R. Dasari

(II)

Over the past eight months the Committee has worked hard and brought about many important changes in the draft Bill on the Protection of Plant Varieties and Farmers' Rights that would go a long way towards preventing bio-piracy, and helping the emergence of farmers themselves as breeders. We are grateful that many of our suggestions and amendments have been incorporated in the final draft, particularly those relating to a separate chapter on farmers' rights and making the authority under the legislation less bureaucratic. But we could not reach unanimous decision on the following points and hence this note. Our objection centres round the following four themes:

First, we feel that the Committee worked in national interest and not because of some external compulsion. Reference to article 27(3)(b) of the TRIPs agreement in the Preamble is, therefore, unnecessary and demeaning. It should be deleted. We wanted this Bill to be a *sui generis* in the real sense of the term.

The main objections raised to the deletion of reference to TRIPs clause are two fold and both are untenable in our view. The first objection is that, agriculture being a State subject the Centre can not legislate on this, without consultation with States, except when such legislation is required to meet an international obligation. The simple solution then could be to send the Bill, without reference to the TRIPs clause, to the states for their approval. Obviously, this would entail a few more months. Loss of a few more months would not matter at this stage, while it would make the legislation based on a broader consensus.

We do not agree with the second objection that the deletion would have "derogatory conclusions with regard to implementation to India's international obligations". While the European countries were under obligation, under TRIPs, to bring the necessary legislation in one year' time, they took three years, with impunity. The vast majority of countries have not yet conformed to the GATT-WTO dictat. Why are we rushing? The international trade scene is in a state of flux following the Seattle deliberations in December, 1999, and many countries are seeking the deletion of this provision. We should not forestall such process, which is beneficial to India in the long run, by reverentially submitting to TRIPs formulation that are oriented against the third world countries. While the Biodiversity Bill is highly urgent in India's interest to prevent bio-piracy, this Bill is less urgent. But the Biodiversity Bill may not be finalised until the end of this year.

Our second objection relates to reference to 'Convention Country' without any proper and detailed discussion in the Committee regarding the Conventions which are likely to join and their implications for India's interests. Three of us wrote to the Chairman regarding this, and sought such discussion. UPOV 78, UPOV 91 and FAO undertaking are among possible options that have not been discussed. There is also a strong view that our Bill could be 'sui generis' in the real sense, to any convention. Since such discussion could not be held in the Committee all references to international conventions and convention countries should be deleted.

Our third objection relates to the period of protection allowed under this legislation, 18 years for trees and 15 years for others. [Clause 24(6)] We feel that this period is too long in this age of fast changing technologies. We suggested that everything in that clause after 'may be reviewed' be deleted, to revise such periods to 9 and 6 years. As a compromise we might have agreed to 12 and 9 years.

While the Government scientists associated with the Committee upheld such period of protection, scientists we talked to in various States and at Delhi took diverse views, the majority supporting a much shorter period, more so when it is not clear whether the beneficiaries would mainly be our farmers or MNCs registering in India.

We were given a list of 47 countries, mostly European countries, that conform to 15/18 years. But the list misses the countries like us, which are poor but rich in biological wealth, such as Indonesia, Thailand, Malaysia and Philippines. While countries rich in biological resources in Latin America have been included, they are, though poorer than the most developed countries, are far richer than us to become our models. We have been told that the relevant countries like Indonesia, Malaysia, Thailand and Philippines have not yet legislated on plant varieties despite TRIPs. If that is the case, why should there be any hurry in our case?

We have also been told that these countries are waiting for us to legislate first, and might take our legislation as the basis for theirs. If this is the case, rather than meekly submitting to Marakesh-WTO whims, we should take a leadership role, should explore possibilities of coordinating with them and work out a legislation that is in conformity with the interests of all the biologically rich and economically poor countries.

The fourth point relates to registration of seeds by farmers. [Clauses 15(1) and 15(2)] As almost all the experts we talked to in Delhi and various States, scientists, farmers and NGOs alike, confirmed, it would be hardly possible for farmers as breeders to produce seeds that would comply with all the four criteria of novelty, distinctiveness, uniformity and stability, in particular the criterion of 'uniformity'. With these criteria in the Bill only the big companies and MNCs would benefit from this legislation as breeders and not farmers. We, therefore, suggested some relaxation of those for farmers. It was pointed out that these criteria are valid within a range, and that range would be specified by the Authority. [CLAUSE 15(2)] We strongly feel that, for farmers, as the category of breeders whose interest we are intending to protect, such 'range' should be made wider than the norm for others, by taking into account their capabilities as opposed to those of the MNCs and other big companies.

Sincerely yours

sd/-
(BIPLAB DASGUPTA)

sd/-
(A. R. KIDWAI)

sd/-
(N.R. DASARI)

sd/-
(AJAY CHAKRABORTY)

sd/-
(MEHBOOB ZAHEDI)

sd/-*
(M.N. DAS)

* Has not furnished the required certificate under direction 87.

THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 2000.

[As redrafted by the Joint Committee]

A
BILL

To provide for the establishment of an effective system for protection of plant varieties, the rights of farmers and plant breeders, to encourage the development of new varieties of plants.

Whereas it is considered necessary to recognise and protect the rights of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties.

And whereas for accelerated agricultural development in the country, it is necessary to protect plant breeders' rights to stimulate investment for research and development, both in the public and private sector, for the development of new plant varieties.

And whereas, such protection will facilitate the growth of the seed industry in the country which will ensure the availability of high quality seeds and planting material to the farmers.

And whereas to give effect to the aforesaid objectives, it is necessary to undertake measures for the protection of the rights of farmers and plant breeders;

And whereas India, having ratified the Agreement on Trade Related Aspects of Intellectual Property Rights should *inter-alia* make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the said Agreement relating to protection of plant varieties;

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows—

CHAPTER I
PRELIMINARY

5 1. (1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 2000.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires:

15 (a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (I) of section 3;

Definitions.

(b) "benefit sharing" in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;

(c) "breeder" means a person or group of persons or a farmer or group of farmers or any institution which has bred, evolved or developed any variety;

(d) "Chairman" means the Chairman of the Tribunal;

(e) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section (5) of section 3;

(f) "Convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

(g) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(h) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes or other heritable determinants that contribute to the principle features, performance or value of the plant variety;

(i) "essentially derived variety", in respect of a variety (the initial variety) shall be said to be essentially derived from such initial variety when it—

(i) is predominantly derived from such initial variety, or from a variety that is itself predominantly derived from such initial variety, while retaining the expression of the essential characteristics that results from the genotype or combination of genotype of such initial variety;

(ii) is clearly distinguishable from such initial variety; and

(iii) conforms (except for the differences which result from the act of derivation) to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotype of such initial variety.

(j) "extant variety" means a variety available in India which is—

(i) notified under section 5 of the Seeds Act, 1966; or

(ii) farmers' variety; or

(iii) a variety about which there is common knowledge; or

(iv) any other variety which is in public domain.

54 of 1966.

(k) "farmer" means any person who—

(i) cultivates crops either by cultivating the land himself; or

(ii) cultivates crops by directly supervising the cultivation of land through any other person; or

(iii) conserves and preserves, severally or jointly, with any person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties.

(l) "farmers' variety" means a variety which—

(i) has been traditionally cultivated and evolved by the farmers in their fields; or

(ii) is a wild relative or land race of a variety about which the farmers possess the common knowledge.

(m) "Gene Fund" means the National Gene Fund constituted under sub-section (I) of section 45;

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(a) "Judicial Member" means a Member of the Tribunal appointed as such under sub-section (1) of section 56 and includes Chairman;

(o) "Member" means a Judicial Member or a Technical member of the Tribunal and includes Chairman;

5 (p) "member" means a member of the Authority appointed under clause (b) of sub-section (5) of section 3 and includes the Member-Secretary;

(q) "prescribed" means prescribed by rules made under this Act;

10 (r) "propagating material" means any plant or its component or part thereof including an intended seed or seed which is capable of or of suitable for regeneration into a plant;

(s) "Register" means a national Register of Plant Varieties referred to in section 13;

15 (t) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (4) of section 12 and includes the Registrar-General;

(u) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section 12;

(v) "Registry" means the Plant Variety Registry referred to in sub-section (I) of section 12;

20 (w) "regulations" means regulations made by the Authority under this Act;

(x) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;

(y) "Variety", means a plant grouping except micro-organism within a single botanical taxon of the lowest known rank, which can be—

25 (i) defined by the expression of the characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation,

30 and includes propagating material of such variety, extant variety, transgenic variety, farmers' variety and essentially derived variety.

(z) "Tribunal" means the Plant Varieties Protection Appellate Tribunal established under section 54;

35 (z-a) "Technical Member" means a Member of the Tribunal who is not a Judicial Member.

CHAPTER II

A. THE PLANT VARIETIES AND FARMERS' RIGHTS PROTECTION AUTHORITY

3. (1) The Central Government shall, by notification in the Official Gazette, establish an authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

40 (2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

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Establishment of Authority.

(3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

(4) The Authority shall consist of a Chairperson and fifteen members.

(5) (a) The Chairperson to be appointed by the Central Government, shall be a person of outstanding calibre and eminence, with long practical experience to the satisfaction of that Government especially in the field of plant varietal research or agricultural development.

(b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely—

(i) the agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, Member ex-officio;

(ii) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, ex-officio;

(iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture & Cooperation, New Delhi, ex-officio;

(iv) the Horticulture Commissioner, Government of India, Department of Agriculture & Cooperation, New Delhi, ex-officio;

(v) the Director, National Bureau of Plant Genetic Resources, New Delhi, ex-officio;

(vi) one member not below the rank of Joint Secretary to the Government of India, to represent the Department of Bio-Technology, Government of India, ex-officio;

(vii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Environment and Forests of the Government of India, ex-officio;

(viii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law of the Government of India, ex-officio;

(ix) one representative from a National or State level farmers' organisation to be nominated by the Central Government;

(x) one representative from a tribal organisation to be nominated by the Central Government;

(xi) one representative from the seed industry to be nominated by the Central Government;

(xii) one representative from an agricultural university to be nominated by the Central Government;

(xiii) one representative from a National or State level womens' organisation associated with agricultural activities to be nominated by the Central Government;

(xiv) two representatives of State Governments on rotation basis to be nominated by the Central Government.

(c) The Registrar General shall be the ex-officio Member-Secretary of the Authority.

(6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

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(7) The Chairperson shall appoint a Standing Committee consisting of five members, one of which shall be a member who is a representative from a farmers' organisation to advise the Authority on all issues including farmers' rights.

5 (8) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed. The allowances for non official members for attending the meeting of the Authority will be as such as may be prescribed. The allowances for non official members for attending the meeting as prescribed.

10 (9) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

15 (10) On the resignation of the Chairperson or on the vacation of the office of Chairperson for any reason, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (a) of sub-section (5).

20 4. (1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings and the transaction of business of its Standing Committee appointed under sub-section 7 of section 3) as may be prescribed.

Meeting of Authority.

(2) The Chairperson of the Authority shall preside at the meetings of the Authority.

25 (3) If for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present at the meeting shall preside at the meeting.

30 (4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.

35 (5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern of interest and after such disclosure, the member concerned or interested shall not attend that meeting.

40 (6) No act or proceeding of the Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of the Authority; or
- (b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

5. (1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

Committee of Authority.

Officers and employees of Authority.	<p>(2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.</p> <p>6. Subject to such control and restriction as may be prescribed, the Authority may appoint such other officers and employees as may be necessary for the efficient performance of its functions and the method of appointment, the scale of pay and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.</p>	5
Chairperson to be Chief Executive.	<p>7. The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.</p>	10
General functions of Authority.	<p>8. (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement for the development of new varieties of plants and to protect the rights of the farmers and breeders.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for—</p>	15
	<p>(a) the registration of extant and new plant varieties subject to such terms and conditions and in the manner as may be prescribed;</p> <p>(b) developing characterisation and documentation of varieties registered under this Act;</p> <p>(c) documentation, indexing and cataloguing of farmers' varieties;</p> <p>(d) compulsory cataloguing facilities for all varieties of plants;</p> <p>(e) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;</p> <p>(f) collecting statistics with regard to plant varieties, including the contribution of any person at any time in the evolution or development of any plant variety, in India or in any other country, for compilation and publication;</p> <p>(g) ensure the maintenance of the National Register of plant variety.</p>	20
Authentication of orders of Authority.	<p>9. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.</p>	25
Delegation.	<p>10. The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 94) under this Act as it may deem necessary.</p>	30
Power of Authority.	<p>11. In all proceedings under this Act before the Authority or the Registrar—</p> <p>(a) the Authority or the Registrar, as the case may be, shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;</p>	35

(b) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

5 B. THE REGISTRY, REGISTRATION OF VARIETIES AND CONDITIONS OF REGISTRATION

12. (1) The Central Government shall establish for the purpose of this Act, a Registry which shall be known as the Plant Varieties Registry. Registry and offices thereof.

10 (2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of plant varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

15 (3) The Authority shall appoint a Registrar General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

20 (4) The Authority may appoint such number of Registrars as it thinks necessary for Registration of plant varieties under the superintendence and direction of the Registrar General under this Act and may make regulations with respect to their duties and jurisdiction.

25 (5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

30 13. (1) For the purposes of this Act, a register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered variety, the particulars of the denomination of each registered variety, its seeds or other propagating material alongwith specification of salient features thereof and such other matters as may be prescribed.

35 (2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Authority.

(3) There shall be kept at each branch office of the Registry a copy of the register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

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CHAPTER III

A. REGISTRATION OF PLANT VARIETIES

44 14. Any person specified in section 16 may make an application to the Registrar for registration of any variety—

45 (a) of such genera and species as specified under sub-section (2) of section 29; or

(b) which is an extant variety; or

(c) which is a farmers' variety.

National Register of Plant Varieties.

Application for Registration.

Registrable
varieties.

15. (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability;

(2) Notwithstanding anything contained in sub-section (1) an extant variety shall be registered under this Act within a specified period if it conforms to such criteria of distinctiveness, uniformity and stability as shall be specified under regulations made by the Authority.

(3) For the purposes of sub-section (1) and sub-section (2) as the case may be a new variety shall be deemed to be—

(a) novel, if at the date of filing of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year, or

(ii) Out side India, in the case of trees or vines earlier than six years, or in any other case, earlier than four years; before the date of filing such application.

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection.

Provided further that the fact that on the date of filing the application for registration the propagating or harvested material of such variety has become a matter of commonly known other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application;

Explanation—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be.

(c) uniform if subject to the variation that may be expected from the particular features of its propagation it is sufficiently uniform in its essential characteristics;

(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle.

(4) A new variety shall not be registered under this Act if the denomination given to such variety—

(i) is not capable of identifying such variety; and

(ii) consists solely of figures; and

(iii) is liable to mislead or to cause confusion concerning the characteristics, value identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Protection of Improper Use) Act, 1950; or

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(viii) is comprised of solely or partly of geographical name:

Provided that the Registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

B. APPLICATION FOR REGISTRATION

16. (1) An application for registration under section 14 shall be made by—

- (a) any person claiming to be the breeder of the variety; and
- (b) any successor of the breeder of the variety; or
- (c) any person being the assignee of the breeder of the variety in respect of the right to make such application or
- (d) any farmer or group of farmers or community of farmers claiming to be the breeder of the variety;
- (e) any person authorised in the prescribed manner by a person specified under clause (a) to (d) to make application on his behalf.
- (f) any university or publicly funded agricultural institution claiming to be the breeder of the variety.

Persons who may make application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Compulsory Plant Variety denomination.

17. (1) Every application shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a plant variety.

(3) Where the denomination assigned to the variety do not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be provided by such regulations.

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(4) Notwithstanding anything contained in the Trade Mark Act, 1999 a denomination assigned to a variety shall not be registered as a trade mark under that Act.

18. (1) Every application for registration under section 14 shall—

**Form of
applicant**

- (a) be with respect to a variety;
- (b) state the denomination assigned to such variety by the applicant;
- (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- (d) be in such form as may be specified by regulation.

(e) contain a complete passport data of the parental lines from which the variety has been derived along with the geographical location in India from where the genetic material has been taken and all such information relating to the contribution, if any, of any farmer, village community, institution or organisation in breeding, evolution or developing the variety;

(f) be accompanied by a statement containing a brief description of the variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration.

(g) be accompanied by such fees as may be prescribed;

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(h) contain a declaration that the genetic material or parental material acquired for the breedings, evolving or developing the variety has been lawfully acquired; and

(i) be accompanied by such other particulars as may be prescribed:

Provided that in case where the application is for the registration of farmers' variety, nothing contained in clause (b) to (i) shall apply in respect of the application and the application in such form as may be prescribed;

(2) Every application referred to in sub-section (a) shall be filed in the office of the Registrar.

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(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

19.(1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantities of seeds of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether such variety along with parental material conform to the standards as may be specified by regulations:

Provided that the Registrar or any person or test centre to whom such seed has been sent for conducting test shall keep such seed during his or its possession in such manner and in such condition that its viability and quality shall remain unaltered.

(2) The applicant shall deposit such fee as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests under sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

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Acceptance
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thereof.

20. (1) On receipt of an application under section 14, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such condition or limitations as he deems fit.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

- (a) require the applicant to amend the application to his satisfaction;
- (b) reject the application;

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

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of application.

21. (1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 20, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

(2) Any person may, within three months from the date of the advertisement of an application for registration on payment of the prescribed fee, give notice, in writing in the prescribed manner, to the Registrar, of his opposition to the registration.

5 (3) Opposition to the registration under sub-section (2) may be made on the following grounds, namely:—

(a) that the person opposing the application is entitled to the breeder's right as against the applicant; or

(b) that the variety is not registrable under this Act;

10 (c) that the grant of certificate of registration may not be in public interest; or

(d) that the variety may have adverse effect on environment.

15 (4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

20 (5) If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

25 (7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

30 (8) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

35 (9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter statement on such terms as he may think fit.

40 22. The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

Registrar to consider grounds of opposition.

C. REGISTRATION OF ESSENTIALLY DERIVED VARIETY

45 23. (1) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 29 by the Central Government shall be made to the Registrar by or on behalf of any person referred to in section 14 and in the manner specified in section 18 as if for the word "variety" the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fee as may be prescribed.

Registration of essentially derived variety.

(2) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.

(3) On receipt of an application under sub-section (2), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(4) When the Authority is satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(5) Where the Authority is not satisfied on the report of the test referred to in sub-section (3) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(6) The rights of the breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety:

Provided that the authorisation by the breeder of initial variety to the breeder of essentially derived variety under sub-section (2) of section 28 may be subject to such terms and conditions as both the parties may mutually agree upon;

(7) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 15 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(8) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (4), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with seal of the Registry and send a copy thereof to the Authority and to such other authority, as may be prescribed, for information.

CHAPTER IV

DURATION AND EFFECT OF REGISTRATION AND BENEFIT SHARING

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24. (1) When an application for registration of a variety (other than an essentially derived variety), has been accepted and either—

(a) the application has not been opposed and the time of notice of opposition has expired; or

(b) the application has been opposed and the opposition has been rejected, the Registrar shall register the variety.

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(2) On the registration of the variety (other than an essentially derived variety), The Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information. The maximum time required by the Registrar for issuing the certificate of registration from the date of filing of the application for registration of a variety shall such as may be prescribed.

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5 (3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may after giving notice to the applicant in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

10 (4) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

15 (5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

20 (6) The certificate of registration issued under this section or sub-section (8) of section 23 shall be valid for nine years in the case of trees and vines and six years in the case of other crops and may be reviewed and renewed for remaining period on payment of such fees as may be fixed by the rules made in this behalf subject to the condition that the total aggregate period of validity shall not exceed—

25 (i) in the case of trees and vines, eighteen years from the date of registration of the variety;

25 (ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under section 5 of the Seeds Act, 1966; and

25 (iii) in the other cases, fifteen years from the date of registration of the variety.

25 25. The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that intervals.

Publication of list of varieties.

30 26. (1) On receipt of a copy of the certificate of registration under sub-section (8) of section 23 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite claims of benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

Determination of benefit sharing by Authority.

35 (2) On invitation of the claims under sub-section (1), any person or group of persons or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form within such period, and accompanied with such fee, as may be prescribed.

40 (3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claims to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

45 (4) The Authority shall, after giving an opportunity of being heard to the parties dispose of the claim received under sub-section (2).

45 (5) While disposing of the claim under sub-section (4), the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

50 (a) the extent and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed,

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

50 (6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to under clause (a) of sub-section (1) of section 45 in the National Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

Breeder to deposit seeds or propagating material.

27. (1) The breeder shall be required to deposit such quantity of seeds or propagating material including parental line seeds of registered variety in the National Gene Bank as may be specified in the regulations for reproduction purpose at the breeder's expense within such time as may be specified in that order.

(2) The seeds or propagating material or parental line seeds to be deposited under sub-section (1) shall be deposited to the National Gene Bank specified by the Authority.

Registration to confer right.

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety.

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in cases where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 the State Government, shall be deemed to be the owner of such right.

Issue certi regis

Authorisation of breeder.

(2) A breeder may authorise any person to produce, sell, market or otherwise deal with a variety registered under this Act subject to such limitations and conditions as may be specified in the regulations.

(3) Every authorisation under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fee to the Registrar to register his title and the Registrar shall on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the Register.

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of the parties in dispute referred to has been determined by the Authority.

(5) The Registrar shall issue a certificate of registration under sub-section (4) to the application after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restriction thereof, if any.

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5 (6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglects to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder, making the breeder or his successor a defendant.

10 (7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such a right further thereof.

(9) Without prejudice to the registration under sub-section (4), the terms of registration—

15 (a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restrictions subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety, or his successors;

20 (b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:—

25 (i) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

30 (ii) that the registration ought not to have effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested.

35 (d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of a registered variety, or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

40 (e) may be cancelled by the Registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

45 (10) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

50 (11) The Registrar shall before making any order under sub-section (9) forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such enquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

Exclusion of certain varieties.

29. (1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

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(2) The Central Government shall, by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties other than extant varieties and farmers' varieties under this Act.

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(3) Notwithstanding anything contained under sub-section (2) above and sub-sections (1) and (2) of section 15, no variety of any genera or species which involves any technology including which is injurious to the life or health of human beings, animals or plants shall be registered under this Act.

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Explanation—For the purpose of this sub-section; the expression any "technology" includes genetically use restriction technology and terminator technology.

(4) The Central Government shall not delete any genera or species from the list of genera or species specified in a notification issued under sub-section (2) except in public interest.

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(5) Any variety belonging to the genera or species excluded under sub-section (4) shall not be eligible for any protection under this Act.

Researcher's Rights.

30. Nothing contained this Act shall prevent—

- (a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; and
- (b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

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Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Special provisions relating to application for registration from citizens of convention countries.

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31. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizen, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

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(2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person or any person entitled to make application on his behalf under section 14 or section 23 makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

5 (3) Where applications have been made for granting of a breeder's right to a variety or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those application was made.

(4) Nothing in this Act shall entitle the breeder of a registered variety to infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

10 32. Where any country specified by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 31 does not accord to citizens of India the same rights in respect of the registration and protection of a variety, as it accords to its own nationals, no nationals of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act.

Provisions as to reciprocity.

15 33. (1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.

Surrender of certificate of registration.

(2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

20 (3) Any of such agent or licensee may, within the prescribed period after such notification give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

25 (4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

30 34. Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the authority on any of the following grounds, namely:—

Revocation of protection on certain grounds.

- 35 (a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;
- (b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;
- 40 (c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act;
- (d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

- (e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 48 regarding the variety in respect of which registration certificate has been issued to such breeder;
- (f) that the breeder has not complied with the provisions of this Act or provisions of rules or regulations made thereunder;
- (g) that the breeder has failed to comply with the directions of the Authority issued under this Act;
- (h) that the grant of the certificate of registration is not in the public interest;

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

Payment of annual fee and forfeiture of registration in default thereof.

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35. (1) The Authority may, with the prior approval of the Central Government and after notification in the Official Gazette, impose a fee to be paid annually, by every breeder of a variety, agent and licensee thereof registered under this Act determined on the basis of benefit or royalty gained by such breeder, agent or licensee, as the case may be, in respect of the variety, for the retention of their registration under this Act.

(2) If any breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under registration certificate issued to such breeder or agent or licensee forfeited.

(3) the arrears of fee imposed under sub-section (1) shall be deemed to be arrears of land revenue and shall be recoverable accordingly.

Power to cancel or change registration and to rectify the Register.

36. (1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure of observe a condition subject to which such registration certificate is issued.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, may apply in the prescribed manner to the Registrar and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(3) The Registrar may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The Registrar, on his own motion may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard make any order referred to in sub-section (1) or sub-section (2).

Correction of Register.

37. (1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act—

- (a) correct any error in the register in the name, address or description of such breeder or any other entry relating to such variety;
- (b) enter in the register any change in the name, address or description of such breeder;

(c) cancel the entry in the register of the variety in respect of which such application is made; and any make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

5 (2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error, or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the register or certificate of registration issued under this Act.

10 38. (1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity therof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

Alteration of
denomination of
a registered
variety.

15 (2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

20 (3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER VI

FARMERS' RIGHTS

25 39. (1) Notwithstanding anything contained in this Act, a farmer—

(i) Who has bred or developed a new variety shall be entitled for registration and other protection in like manner as a breeder of a variety under this Act,

(ii) the farmers' variety shall be entitled for registration as specified in the Article 18(h).

(iii) who is engaged in the conservation of genetic resources of land races and wild relatives of economic plants and their improvement through selection and preservation shall be entitled in the prescribed manner for recognition and reward from the National Gene Fund;

35 Provided that material so selected and preserved has been used as donors of genes in varieties registrable under this Act;

(iv) Shall be deemed to be entitled to save, use, sow, resow, exchange, share or sell his farm produce including seed of a variety protected under this Act in the same manner as he was entitled before the coming into force of this Act;

40 Provided that the farmer shall not be entitled to sell branded seed of a variety protected under this Act.

45 Explanation: For the purpose of clause (iv) branded seed means any seed put in a package or any other container and labelled in a manner indicating that such seed is of a variety protected under this Act.

Farmers' rights.

(2) Where any propagating material of a variety registered under this Act has been sold to a farmer or a group of farmers or any organisation of farmers, the breeder of such variety shall disclose to the farmer or the group of farmers or the organisation of farmers, as the case may be, the expected performance under given conditions, and if such propagating material fails to provide such performance under such given conditions as the farmer or the group of farmers or the organisation of farmers, as the case may be, may claim compensation in the prescribed manner before the Authority and the Authority shall after giving notice to the breeder of the variety and after providing him an opportunity to file opposition in the prescribed manner and after hearing the parties, it may direct the breeder of the variety to pay such compensation as it deems fit, to the farmer or the group of farmers or the organisation of farmers, as the case may be.

Certain information to be given in application for registration.

40. (1) A breeder or other person making application for registration of any variety under chapter III shall disclose in the application the information regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such variety.

(2) If the breeder or such other person fails to disclose any information under sub-section (1), the Registrar may after being satisfied that the breeder or such person has wilfully and knowingly concealed such information reject the application for registration.

Rights of communities.

41. (1) Any person, group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may on behalf of any village or local community in India, file in any centre notified, with the previous approval of the Central Government by the Authority in the Official Gazette any claim attributable to the contribution of the people of that village or local community as the case may be in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons or such governmental or non-governmental organisation in such manner as it deems fit and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such enquiry as it may deem fit, that the variety with which the report is related has been registered under the provision of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made claim under sub-section (1) to the Authority, as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation granted under sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

Protection of innocent infringement.

42. Notwithstanding anything contained in this Act —

(i) a right established under this Act shall not be deemed to be

infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

5 (ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court nor any cognizance of any offence under this Act shall be taken for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

10 43. Notwithstanding anything contained in section 28 and sub-section (6) of section 23, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section (1) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Authorisation of farmers' variety.

15 44. A farmer or group of farmers or village community shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act and the rules made thereunder.

Exemption from fee.

20 Explanation:—For the purposes of this section, fee for any proceeding includes any fee payable for inspection of any document or for obtaining a copy of any decision or order or document under this Act or the rules made thereunder.

25 45. (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

Gene Fund.

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the authority by way of royalty under sub-section (1) of section 35;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;

(d) the contribution from any national and international organisation and other sources.

30 2. The Gene Fund shall in the prescribed manner be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 41;

(c) the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;

(d) the other expenditures of the schemes relating to benefit sharing framed under section 46.

35 46. (1) The Central Government shall, for the purposes of section 41 and clause (d) of sub-section (2) of section 45 frame by notification in the Official Gazette, one or more schemes.

Framing of schemes etc.

infringed by a farmer who at the time of such infringement was not aware of the existence of such right; and

5 (ii) a relief which a court may grant in any suit for infringement referred to in section 65 shall not be granted by such court nor any cognizance of any offence under this Act shall be taken for such infringement by any court against a farmer who proves, before such court, that at the time of the infringement he was not aware of the existence of the right so infringed.

10 43. Notwithstanding anything contained in section 28 and sub-section (6) of section 23, where an essentially derived variety is derived from a farmers' variety, the authorisation under sub-section (1) of section 28 shall not be given by the breeder of such farmers' variety except with the consent of the farmers or group of farmers or community of farmers who have made contribution in the preservation or development of such variety.

Authorisation of farmers' variety.

15 44. A farmer or group of farmers or village community shall not be liable to pay any fee in any proceeding before the Authority or Registrar or the Tribunal or the High Court under this Act and the rules made thereunder.

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25 45. (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

Gene Fund.

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act or propagating material of such variety or essentially derived variety, as the case may be;

30 (b) the annual fee payable to the authority by way of royalty under sub-section (1) of section 35;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 41;

(d) the contribution from any national and international organisation and other sources.

35 2. The Gene Fund shall in the prescribed manner be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 41;

40 (c) the expenditure for supporting the conservation and sustainable use of genetic resources including in-situ and ex-situ collections and for strengthening the capability of the Panchayat in carrying out such conservation and sustainable use;

(d) the other expenditures of the schemes relating to benefit sharing framed under section 46.

45 46. (1) The Central Government shall, for the purposes of section 41 and clause (d) of sub-section (2) of section 45 frame by notification in the Official Gazette, one or more schemes.

Framing of schemes etc.

49. (1) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 47 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety or essentially derived variety, as the case may be, by such breeder.

(2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made has taken immediate measures to meet the reasonable requirements of the public for the seeds or other propagating material of such variety.

50. The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors but in any case shall not exceed to the total remaining period of the protection of that variety and when a compulsory licence is granted the prescribed authority shall in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

51. (1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure—

- (i) reasonable compensation to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it and other relevant factors;
- (ii) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or its other propagating material of such variety timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

52. (1) The Authority may on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, it may after giving such licensee an opportunity to file opposition and of being heard make order to revoke such licence.

(2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar to rectify the entry or correct the register relating to such revocation and the Registrar shall rectify the entry or correct the register accordingly.

53. The Authority may on its own motion or on application from the licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar to correct the entries and register according to such modification and the Registrar shall ensure such corrections to be made accordingly.

CHAPTER-VIII

TRIBUNAL

54. The Central Government may, by notification in the Official Gazette, establish a Tribunal to be known as the Plant Varieties Protection Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act.

Adjournment of application for grant of compulsory licence.

Duration of compulsory licence.

Authority to settle terms and conditions of licence.

Revocation of compulsory licence.

Modification of compulsory licence.

Tribunal.

Composition of
Tribunal.

55. (1) The Tribunal shall consist of a Chairman and such number of Judicial Members and Technical Members as the Central Government may deem fit to appoint.

(2) A Judicial Member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade-II of that service or any equivalent or higher post for at least three years or who has been an advocate for at least twelve years.

Explanation:— For the purposes of this sub-section (1),—

(i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

(ii) in computing the period during which a person has been an advocate, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(3) A Technical Member shall be a person who is an eminent agricultural scientist in the field of plant breeding and genetics and possesses an experience of at least twenty years to deal with plant variety or seed development activity, or who has held the post in the Central Government or State Government dealing with plant variety or seed development equivalent to the Joint Secretary to the Government of India for at least three years and possesses the special knowledge in the field of plant breeding and genetics.

(4) The Central Government shall appoint a Judicial Member of the Tribunal to be the Chairman thereof.

(5) The Central Government may appoint one of the member of the Tribunal to be the Senior Member thereof.

(6) The Senior member or a Member shall exercise such of the powers and perform such of the functions of the Chairman as may be delegated to him by the Chairman by a general or special order in writing.

Appeals to the
Tribunal.

56. (1) An appeal shall be preferred to the Tribunal within the prescribed period from any—

(a) order or decision of the Authority or Registrar, relating to registration of a variety; or

(b) registration as an agent or a licensee of a variety; or

(c) determining the benefit sharing by the Authority;

(d) order or decision of the Authority regarding revocation of compulsory licence or modification of compulsory licence; or

(e) order or decision of Authority regarding payment of compensation, made under this Act or rules made thereunder.

(2) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be prescribed.

(3) The Tribunal in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

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57. (1) The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. Orders of the Tribunal.

5 (2) The Tribunal may, at any time within thirty days from the date of the order, with a view to rectifying the mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the appellant or the opposite party.

10 (3) In every appeal, the Tribunal, where it is possible, hear and decide such appeal within a period of one year from the date of filing the appeal.

10 (4) The Tribunal shall send a copy of any orders passed under this section to the Registrar.

15 (5) The orders of the Tribunal under this Act shall be executable as a decree of a civil court.

15 58. (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the Chairman of the Tribunal from among the Members thereof. Procedure of Tribunal.

20 (2) A bench shall consist of one Judicial Member and one Technical Member.

20 (3) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred to the Chairman for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

25 (4) Subject to the provision of this Act, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions, including the places at which the Benches shall hold their sitting.

30 (5) The Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Registrar under section 11, and any proceeding before the Tribunal shall be deemed to be judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, and the Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1973.

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35 (6) Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or any other manner) shall be made on, or in any proceedings relating to an appeal unless—

40 (a) copies of such appeal and of all documents in support of the plea for such interim order are furnished to the party against whom such appeal is made or proposed to be made; and

40 (b) opportunity is given to such party to be heard in the matter.

45 59. Notwithstanding anything contained in this Act, till the establishment of the Tribunal under section 54, the Intellectual Property Appellate Board established under section 83 of the Trade Marks Act, 1999 shall exercise the jurisdiction, powers and authority conferred on the Tribunal under this Act subject to the modification that in any Bench of such Intellectual Property Appellate Board constituted for the purpose of this section, for the Technical Member referred to in sub-section (2) of section 84 of the Trade Marks Act, 1999, the Technical Member shall be appointed under this Act and he shall be deemed to be the Technical Member for constituting the Bench under the said sub-section (2) of section 84 for the purposes of this Act. Transitional provision.
23 of 1999

CHAPTER IX

FINANCE, ACCOUNTS AND AUDIT

Grants Central Government.	60. The Central government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.	5
Authority Fund.	61. (1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto— (a) all grants and loans made to the Authority by the Central Government under section 60; (b) all fees received by the Authority and the Registrars except the annual fee determined on the basis of benefit or royalty under sub-section (1) of section 35; (c) all sums received by the Authority from such other sources as may be decided upon by the Central Government.	10 15
	(2) The Protection of Plant Varieties Authority Account shall be applied for meeting— (a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members; (b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.	20
Budget, accounts and audit.	62. (1) the Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. (2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India. (3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same right and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of the government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority. (4) The accounts of the Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in his behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.	25 30 35 40
Financial and administrative powers of the Chairperson	63. The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed: Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any other officer of the Authority subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.	45 50

CHAPTER X

A. INFRINGEMENT

64. Subject to the provisions of this Act, a right established under this Act is infringed by a person—

5 (a) who, not being the breeder of a variety registered under this Act or a registered agent or registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

10 (b) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind or general people in identifying such variety so registered.

65. (1) No suit—

15 (a) for the infringement of a variety registered under this act; or
 (b) relating to any right in a variety registered under this Act,
 shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

20 (2) For the purpose of clauses (a) and (b) of sub-section (1), "District court having jurisdiction" shall mean the District Court within the local limit of whose jurisdiction the cause of action arises.

66. (1) The relief which a court may grant in any suit for infringement referred to in section 65 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

25 (2) The order of injunction under sub-section (1) may include an *ex-parte* injunction or any interlocutory order for any of the following matters, namely:—

(a) for discovery of documents;

(b) preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit;

30 (c) attachment of such property of the defendant which the court deems necessary to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

67. (1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to enquire and report upon the matter to enable it to form the desired opinion.

(2) The scientific adviser may be paid such remuneration of expenses as the court may fix.

B. OFFENCES, PENALTIES AND PROCEDURE

40 68. (1) No person other than the breeder of a variety registered under this Act or a registered licensee or registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

(2) A person shall be deemed to apply the denomination of a variety registered under this Act who—

45 (a) applies it to the variety itself; or
 (b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or
 (c) places, encloses or annexes the variety which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

Infringement.

Suit for
infringement
etc.

Relief in suits
for
infringement.

Opinion of
scientific
adviser.

Prohibition to
apply the
denomination of
a registered
variety.

(d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(e) in relation to the variety uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used. 5

(3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing. 10

Meaning of
falsely applying
the
denomination or
a registered
variety.

69. (1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety— 15

(a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety.

(b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act. 20

(2) any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.

(3) In any prosecution for falsely applying a denomination of a variety registered under this Act, the burden of proving the assent of the breeder of such variety shall lie on the accused. 25

Penalty for
applying false
denomination
etc.

70. (1) Any person who—

(a) applies any false denomination to a variety; or

(b) indicates the false name of a country or place or false name and address of the breeder of a variety registered under this Act in course of trading such variety; 30

Shall unless he proves that he acted, without intent to defraud, be punishable—

(i) With imprisonment for a term which shall not be less than three months but which may extend to two years; or 35

(ii) fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees; or

(iii) both.

Penalty for
selling varieties
to which not
authorised or to
which false
denomination is
applied, etc.

71. Any person who sells, or exposes for sale, or has in his possession for sale or for any purpose of trade or production any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall unless he proves— 40

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety; 45

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(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such variety; or

5 (c) that otherwise he had acted innocently,
be punishable—

(i) with imprisonment for a term which shall not be less than six months but which may extend to two years; or

(ii) with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees; or

10 (iii) both;

72. Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable—

20 (i) with imprisonment for a term, which shall not be less than six months and may extend to three years; or

(ii) with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees; or

(iii) both;

25 73. Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence—

(i) with imprisonment for a term which shall not be less than one year but which may extend to three years; or

30 (ii) with fine which shall not be less than two lakh rupees but which may extend to twenty lakh rupees; or

(iii) both;

35 74. The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

40 75. Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

Penalty for
falsely
representing
a
variety
as
registered.

Penalty for
subsequent
offence.

No offence in
certain cases.

Exemption of
certain persons
employed in
ordinary course
of business.

Procedure where invalidity of registration is pleaded by the accused.

76. (1) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the register on the ground that the registration is invalid. 5

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(2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the register, the court shall proceed with the case as if the registration were invalid. 15

(4) Where before institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the registration of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification. 20

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Offences by companies.

77. (1) If the person committing an offence under this Act is a company, the company as well as every person incharge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. 30

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Provided that nothing contained in sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. 35

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 40

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Explanation — For the purpose of this section—

(a) "company" means any body corporate and includes a firm or other association of individuals; and 45

(b) "director", in relation to a firm, means a partner in the firm.

CHAPTER XI
MISCELLANEOUS

78. Notwithstanding anything contained in this Act, the Authority or the Registrar shall—

5 (a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which is considered prejudicial to the interest of the security of India; and

10 (b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation:— For the purpose of this section, the expression “security of India” means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

79. Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on contract to and accepted by the buyer.

80. If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

81. The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

82. (1) A copy of any entry in the register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Registrar or the Authority, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

50 (2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or the Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

Protection of security of India.

Implied warranty on sale of registered variety, etc.

Death of party to a proceeding.

Right of registered agent and the registered licensee to institute suit.

Evidence of entry in register, etc., and things done by the authority and the registrar.

Authority and
registrar and
other officers
not compellable
to production of
register, etc.

Document open
to public
inspection.

Report of the
Authority and
the Registrar to
be placed before
Parliament.

Government to
be bound.

Proceedings
before authority.

Protection of
action taken in
good faith.

Bar of
jurisdiction.

Member and
staff of
Authority etc. to
be public
servants.

Exemption from
tax on wealth
and income.

Act to have
overriding
effect.

Power to
remove
difficulties.

83. The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings be compelled to produce the register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matter therein recorded unless by order of the court, as the case may be, made for special case.

5

84. Any person may, on an application to the Authority or the Registrar, as the case may be; and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

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85. The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

15

86. The provisions of this Act shall be binding on the Government.

87. All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of section 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

20

88. No suit, prosecution or other legal proceedings shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority, or Registrar under the provisions of this Act, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

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89. No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar or the Tribunal is empowered by or under this Act to determine.

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90. The Chairperson, members and the officers and other employees of such Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

35

91. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth tax, income tax or any other tax in respect of their wealth, income, profits or gains derived.

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92. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

45

93. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty;

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Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

50

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

94. (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

5 (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following of this Act.

10 (a) duties and jurisdiction of Registrars under sub-section (4) of section 12;

(b) the terms of office and the conditions of service of the Registrars under sub-section (5) of section 12;

(c) the criteria of distinctiveness, uniformity and stability for registration of extant variety under sub-section (2) of section 15;

15 (d) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 16;

(e) matters governing the assignment of denomination of variety under sub-section (2) of section 17;

(f) the time within which the Registrar may require the applicant to propose another denomination under sub-section (3) of section 17;

20 (g) the form of application under clause (d) of sub-section (1) of section 18;

(h) the standards for evaluating seeds during tests under sub-section (1) of section 19;

(i) to specify the quantity of seeds or other propagating material including parental line seeds to be deposited by a breeder under section 27;

25 (j) the limitations and conditions subject to which a breeder may authorise a person to sell, market or otherwise deal with variety under sub-section (2) of section 28;

(k) the form for authorisation under sub-section (3) of section 28.

30 95. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely—

35 (i) the terms of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(ii) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters under sub-section (7) of section 3;

40 (iii) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) and the transaction of business of its Standing Committee appointed under sub-section (7) of section 3 under sub-section (1) of section 4;

(iv) the control and restriction regarding appointment of the officers and employees of the Authority and the method of such appointment, scale of pay and allowances and other conditions of service under section 6;

Power to make regulations.

Power of the Central Government to make rules.

(v) the powers and duties of the chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (1) of section 8 may provide for the registration of extant or new varieties under clause (a) of sub-section (2) of that section; 5

(vii) the manner for arranging production and sale of the seeds under clause (d) of sub-section (2) of section 8;

(viii) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matter under sub-section (3) of section 12; 10

(ix) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 13;

(x) the manner of authorising a person under clause (e) of sub-section (1) of section 16;

(xi) the fee under clause (g) and the other particular under clause (i) which shall accompany the application under sub-section (1) of section 18; 15

(xii) the period within which after making application a proof of the right to make the application is to be furnished under sub-section (3) of section 18; 20

(xiii) the form of application under provision to section (1) of section 18;

(xiv) the fee to be deposited by applicant under sub-section (2) of section 19;

(xv) the manner and method of conducting the tests referred to in sub-section (1), under sub-section (3) of section 19; 25

(xvi) the manner of advertising specifications of variety for registration including its photograph or drawing under sub-section (1) of section 21;

(xvii) the manner of making application and the fee payable for allowing further period to give notice and the manner of giving notice under sub-section (2) of section 21; 30

(xviii) the manner of sending counter statement under sub-section (4) of section 21;

(xix) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 21; 35

(xx) the documents and the fee which shall accompany the application under sub-section (2) of section 22;

(xxi) the tests to be conducted and the procedure to be followed under sub-section (4) of section 23;

(xxii) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (9) of section 24;

5 (xxiii) the form of a certificate of registration and the other authority to which a copy thereto and the maximum time for issuing the certificate of registration shall be sent under sub-section (2) of section 24;

10 (xxiv) the manner of giving notice to the applicant under sub-section (3) of section 24;

15 (xxv) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;

20 (xxvi) the form for submitting claims of benefit sharing and the fee to be accompanied therewith under sub-section (2) of section 26;

25 (xxvii) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;

30 (xxviii) the fee payable for renewal or further renewal of period of validity of certificate of registration under sub-section (6) of section 26;

(xxix) the manner of making reference under sub-section (7) of section 26;

35 (xxx) the manner of making an application for registration for title and the fee to be accompanied therewith under sub-section (4) of section 28;

(xxxi) the manner of referring the disputes regarding registration of entitlement under sub-section (4) of section 28;

40 (xxxii) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;

(xxxiii) the manner of making an application for varying the terms of registration under clause (a), of sub-section (9) of section 28;

(xxxiv) the manner of making an application by the registered breeder and certain others for cancellation of terms of registration under clause (b) of sub-section (9) of section 28;

45 (xxxv) the manner of application by any person other than the breeder, his succession, the registered agent or the registered licensee for cancellation of terms of registration under clause (c) of sub-section (9) of section 28;

(xxxvi) the manner of application for cancellation of the terms of registration under clause (d) of sub-section (9) of section 28;

(xxxvii) the manner of application for cancellation of the terms of registration under clause (e) of sub-section (9) of section 28;

45 (xxxviii) the manner to issuing notice to Registered breeder, and certain others under sub-section (10) of section 28;

(xxxix) the manner of giving notice to the Registrar under sub-section (1) of section 33;

(xl) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 33;

(xli) the period within which the notice of opposition under sub-section (3) of section 33 may be given; 5

(xlii) the manner of making application under section 34;

(xliii) the manner depositing fee payable under sub-section (2) of section 35;

(xliv) the manner of making application under sub-section (1) of section 36;

(xlv) the manner of applying to the Registrar under sub-section (2) of section 36; 10

(xlvi) the manner of giving notice under sub-section (4) of section 36; 10

(xlvii) the manner of application under sub-section (1) of section 37;

(xlviii) the manner of making application under sub-section (2) of section 37; 15

(xlix) the manner to apply to the Registrar under sub-section (1) of section 38; 15

(i) the manner of advertising application and to give notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (2) of section 38; 20

(ii) the manner of advertising the denomination of the variety under sub-section (3) of section 38;

(iii) the manner of claiming compensation and filing of opposition under sub-section (2) of section 39; 25

(liii) the manner of recognition and reward from the National Gene Fund under clause (2) of section 42; 25

(liv) the particulars to be contained in the application under sub-section (2) of section 47; 30

(lv) the authority and the manner in which such authority shall make available to the compulsory licensee the reproduction material of the variety under section 50; 30

(lvi) the form for making application under sub-section (1) of section 52;

(lvii) the period within which an appeal shall be preferred under section 56; 35

(lviii) the form of petition and the particulars which such petition shall contain under sub-section (3) of section 56; 35

(lix) the manner of issuing notice and filing objection under sub-section (3) of section 41;

(lx) the manner of receiving benefit sharing under clause (9) of sub-section (I) of section 45;

(lxi) the manner for applying Gene Fund under sub-section (2) of section 45; 40

(lxii) the period within which an appeal shall be made under sub-section (1) of section 60; 40

(lxiii) the form of petition and the particulars which such petition shall contain under sub-section (2) of section 60; 45

- (lxiv) the form for preparing annual statement of accounts under sub-section (1) of section 62;
- (lxv) the financial and administrative powers which the Chairperson shall exercise under section 63;
- 5 (lxvi) the manner of using the denomination of a variety under sub-section (1) of section 68;
- (lxvii) the manner of authorising registered agent or registered licensee under section 81;
- 10 (lxviii) the manner of issuing certified copy of Register, or any other document under section 83;
- (lxix) the fee payable for obtaining a certified copy of any entry in the Register, or any other document under section 84;
- 15 (lxx) any other matter which is to be, or may be, prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision, is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

96. Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

Rules, regulations and schemes to be laid before Parliament.

APPENDIX I

(*vide* para 2 of the Report)

The Motion for reference of the Bill to a Joint Committee

"That the Bill to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants, and to give effect to sub-paragraph (b) of paragraph 3 of article 2 of Part-II of the Agreement on Trade Related Aspects of Intellectual Property Rights, be referred to a Joint Committee of the Houses consisting of 30 members, 20 from this House, namely:—

1. Dr. Baliram
2. Shri Ajay Chakraborty
3. Shrimati Kailasho Devi
4. Shri G. Putta Swamy Gowda
5. Shri Suresh Ramrao Jadhav
6. Shri Raghuveer Singh Kaushal
7. Dr. Ramkrishna Kusmaria
8. Shri Jagannath Mallick
9. Shri Kamal Nath
10. Dr. Ranjit Kumar Panja
11. Shri Anna Saheb M.K. Patil
12. Shri Sharad Pawar
13. Shri Nawal Kishore Rai
14. Shri Chandra Bhushan Singh
15. Shri Ram Prasad Singh
16. Shri Shanker Singh Vaghela
17. Shri Ummareddy Venkateswarlu
18. Shri Sahib Singh Verma
19. Shri Mahboob Zahedi
20. Shri Nitish Kumar

and 10 from Rajya Sabha

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next Session;

that in other respects the Rules of procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee"

APPENDIX II

(*vide* para 3 of the Report)

Motion in Rajya Sabha for reference of the Bill to a Joint Committee.

MOTION

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants, and to give effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Janardhana Poojary
2. Shri V. Kishore Chandra S. Deo
3. Dr. Ranbir Singh
4. Shri Onkar Singh Lakhawat
5. Shri Yadlapati Venkat Rao
6. Prof. M. Sankarlingam
7. Shri Ranjan Prasad Yadav
8. Shri Balwant Singh Ramooawalia
9. Dr. Biplab Dasgupta
10. Shri Gurudas Das Gupta

The above motion was adopted by the Rajya Sabha at its sitting held on Thursday, the 23rd December, 1999".

APPENDIX III

(*vide* para 13 of the Report)

List of Associations/Organisations/Individuals etc. from whom Memoranda were received by the Joint Committee

Memo No.	Name of Association with Address
1.	Shri Sharafuddin, P.O. Box-57, Pathanamthitta P.O. 689645 Kerala
2.	Shri Ram Gopal Bishnoi, 118, Anaz Mandi, Fatehabad (Hissar), Haryana.
3.	Western Agri. Seeds Pvt. Ltd., 802/11, Western House, Western Road, GIDC (Engg. Estate), Sector No. 28, Gandhinagar-382 028. Gujarat
4.	Shri Anil D. Patel, Post: Gandhol, Ta.-Idar, Distt. Sabarkantha-383 410, Gujarat.
5.	Dr. P.K. Singh, Director, Indian Agricultural Research Institute, New Delhi-110 012.
6.	Citizens' Commission for National Issues, B-108, Saraswati Kunj, 25, IP Extension, Patparganj, Delhi-110 092
7.	Shri U.N. Malik, Secretary, All India Biotech Association, 2, Local Shopping Centre, Block-EFGH, Masjid Moth, G.K.-II, New Delhi-110 012
8.	Dr. Vandana Shiva, Director, Navdanya, A-60, Hauz Khas, New Delhi-110 016
9.	Shri N.K. Shukla, (Joint Secretary), All India Kisan Sabha, 4, Ashoka Road, New Delhi 110 011.
10.	Shri Suneet Chopra, (Joint Secretary), All India Agricultural Workers Union, 12-B, Feroze Shah Road, New Delhi-110 011.

Memo. No.	Name of Association with Address
11.	Shri B.K. Keayla (Managing Trustee), Centre for Study of Global Trade System and Development, A-388, Sarita Vihar, New Delhi-110 044.
12.	Shri Usman Nagori, Kisan Mazdoor Shakti Sanghathan, Malpura (Tonk), Rajasthan.
13.	Dr. S.C. Tiwari, 1, Kusum Kutir, Mahamanapuri, Varanasi-221 005, U.P.
14.	Shri Manad Vankamgar, Sahakari Sanstha, Maryadit, Aajra Taluka Aajra, Joshi Galli, Kolhapur, Maharashtra.
15.	Dr. G.S. Kalkat, Vice-Chancellor, Punjab Agricultural University, Ludhiana-121 004, Punjab.
16.	Shri B.K. Keayla, National Working Group on Patent Laws (Centre for study on GATT Issues), A-388, Sarita Vihar, New Delhi-110 044.
17.	Shri Pradip Nag (Secretary), Grass-Root Level Development Association, P.O.: Jarabari, District Lakhimpur-784 184, Assam.
18.	Dr. R.R. Gupta, Professor/E.B. (Oil Seeds), C.S.A. University of Agriculture & Technology, Kanpur-208 002, U.P.
19.	Prof. P.K. Khosla (Vice-Chancellor), Himachal Pradesh Krishi Vishwavidyalaya, (Himachal Pradesh Agricultural University) Palampur-176 062 (H.P.)
20.	Prof. R.P. Awasthi, Vice-Chancellor, Dr. Y.S. Parmar University of Horticulture & Forestry, Nauni- 173 230. Solan (H.P.)
21.	Dr. S. Kannaiyan, Vice-Chancellor, Tamilnadu Agricultural University. Coimbatore-641 003.
22.	Prof. Madhav Gadgil, Centre for Ecological Science, Indian Institute of Science, Bangalore- 560 012.

Memo No.	Name of Association with Address
23.	Shri Anil K. Gupta, Indian Institute of Management, Vastrapur, Ahmedabad-380 015.
24.	Shri R.S. Arora, (Secretary-General) Seed Association of India, Secretariat-1119-1120, Vishal Tower, District Centre, Janak Puri, New Delhi-110 058.
25.	Smt. Shalini Bhutani, (Legal & Gender Director), Research Foundation for Science Technology & Ecology, A-60, Hauz Khas, New Delhi-110 016.
26.	Dr. Panjab Singh, Vice-Chancellor, Jawaharlal Nehru Krishi Vishwavidyalaya, Jabalpur-482 004 (M.P.)
27.	Shri K. Rajan, IAS (Retd.), 701-A, Falcon's Castle CHS Ltd., Senapati Bapat Marg, Lower Parel, Mumbai-400 013.
28.	Shri Vinay Kumar, Vice-Chancellor, Chaudhary Charan Singh Haryana Agricultural University, Hissar-125 004, Haryana.
29.	M.S. Swaminathan Research Foundation, 3rd Cross Street, Taramani Institutional Area, Chennai-600 113.
30.	Dr. I.V. Subba Rao, Vice Chancellor, Acharya N.G. Ranga Agricultural University, Hyderabad-500 030, A.P.
31.	Dr. Y.S. Nerkar, Director of Research, Marathwada Agricultural University, Parbhani-431 402 (Maharashtra).
32.	Shri Sharad Joshi, Shetkari, Sanghathana, 102, Beena Apartment, Hanuman Nagar, Senapati, Bapat Road, Pune-411 016.

Memo No.	Name of Association with Address
33.	Prof. Anil K. Gupta, Indian Institute of Management, Vastrapur, Ahmedabad-380 015.
34.	Shri Ashish Kothari, Kalpvriksh, Environmental Action Group, Apartment 5, Shree Dutta Krupa, 908, Deccan Gymkhana, Pune-411 004 (Maharashtra).
35.	R.V. Anuradha, A-119, Swasthya Vihar, Vikas Marg, New Delhi-110 092.
36.	Dr. A.S. Khanra, Dakshin Durgapur Rural Development Society, P.O. Dakshin Durgapur, District Howrah-711 301 (West Bengal)
37.	Shri V.F. Shah (Hon. Secretary), Intellectual Property Law-Practitioners Association, 'A' Aidun Building, 5th Floor, 1st Dhobi Talao, Mumbai-400 002.
38.	Prof. Dinesh Baishya, Executive Director, Society for Appropriate Technology, Anand Nagar, Chaimail, Guwahati-781 002, Assam.
39.	Shri Prahlad, Borthakur, President, Sodou Asom Pathar Parichalana Samiti (SAPPSA), Agricultural Campus, Ulubari, Guwahati-781 007, Assam.
40.	Shri Ashok Kumar Gogoi, DPPS, Tinsukia (Assam), Zila Pathar Parichalana Samity, Parhotia, Tinsukia-786 125, Assam.
41.	Gaia Conservers Association (NGO), Pachim Jalukbari, Lankeswar, P.O. Guwahati University, Kamrup-781 014, Assam.
42.	Shri Sanjit Biswas, Gen. Secretary, All Bengal Electricity Consumers' Association, 27 A, Dhiren Dhar Sarani, Calcutta-700 012.
43.	Shri Samar Baora (Secretary), Paschim Banga Pradeshik Krishak, Sabha, 31, Alimuddin Street, Calcutta-700 016.

Memo Name of Association with Address
No.

44. Shri Haripada Biswas,
Agragami Kishan Sabha,
49 C, C.R. Avenue,
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45. Govt. of West Bengal.

46. Shri M. Ramaswamy,
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47. Dr. Sultan Ismail,
(Chairman), ARISE, Institute of Research in Soil Biology and Biotechnology,
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48. Shri R.C. Arumugam
Secretary, Horticulture Grower's Association,
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49. Shri Bharath Jairaj,
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50. Shri O.B. Ramasubramanian,
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51. Shri K. Balakrishnan,
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52. The Vice-Chancellor,
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53. Dr. R.S. Rant,
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54. Maharashtra Fertilisers, Pesticides Seeds Dealers Association,
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Memo No.	Name of Association with Address
55.	Shri Anandrao B. Pawar, C/o Shri Mohan Dharia Vanrai, Aditya Residency, 498, Parvati, Mitra Mandal Chowk, Pune-411 009.
56.	Shri S. Venkat Reddy, Secretary & Treasurer, Seedsman Association, No. 50, 3rd Floor, Abids Shopping Centre, Opp. Hotel Emerald, Hyderabad-500 001, A.P.
57.	Dr. A.K. Ghosh, President, ENDEV, 329 Jodhpur Park, Calcutta-700 068, West Bengal.
58.	Dr. V.S. Bawasakar, Agrotec Consultants, 15, Krishi Udyog Bhavan, 1, Market Yard, Pune-411 037.
59.	Dr. P.D. Muzumdar, Monsanto Enterprises Ltd., Agricultural Sector, Ahura Centre, 5th Floor, 96, Mahakali Caves Road, Andheri (East), Mumbai-400 093.
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62.	Dr. Ashok Kumar Ghosh, Secretary, Dahlia Society of India, 12, Bhattacharjee Para Road, Plot No. 5, Calcutta-700 063.
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Memo No.	Name of Association with Address
64.	Shri V.B. Shekhar, Dr. Panjabrao Deshmukh Krishi Vidyapeeth, Akola-444 104. Maharashtra.
65.	Shri S.S. Ray, Secretary, Communist Mancha, CA-66, Sector-I, Salt Lake, Calcutta-700 064.
66.	Dr. S. Mukherjee, Secretary, Drug Action Forum, 10A, Parshibagan Lane, Calcutta-700 009.
67.	Shri Niranjan Banerjee, Sr. Consultant, Pallishree Limited, 7, Indian Mirror Street (Top Floor), Calcutta-700 013.
68.	Shri Sulabha Brahme, Lokvigyan Sangathan, 129 B2, Erandawane, Pune-411 004.
69.	Shri Shailendra Naryal, Administrator, Public Interest Legal Support and Research Centre (PILSARC), A-131, New Friends Colony, New Delhi-110 065.
70.	Prof. R. Yamdagni, Vice-Chancellor, Narendra Deva University of Agriculture and Technology, Kumarganj, Faizabad-224 229 (U.P.)
71.	Shri V. Duraimanickam, General Secretary, Tamilnadu Vivasayigal Sangam, 'Baban Illam', 19, Sevalier Sivaji Ganesan Salai, T. Nagar, Chennai-600017.
72.	Dr. D.B. Desai, President, Gujarat State Seeds Producers Association, 'Vasu Kanan', 1st Floor, Near Lotus Flats, Opp. Gujarat Vidhyapith, Ashram Road, Ahmedabad-380 014.

47

Memo No.	Name of Association with Address
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73. Prof. T.C. Deka,
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74. Dr. I.R. Bhattacharjee,
Senior Scientist,
Directorate of Extension Education,
Assam Agricultural University,
Jorhat-785 013, Assam.
75. Shri Mohan Dharia,
President,
Vanarai, Aditya Residency,
498, Parvati, Mitramandal Chowk,
Pune-411 009.
76. Sher-e-Kashmir University of Agriculture Sciences & Technology,
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77. Government of Jammu & Kashmir,
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78. Shri Rajeev Dhavan, Director,
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79. Government of Haryana,
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Kandi Vikas Bhavan,
Sector-21,
Panchkula.
80. Shri Subhash Yadav,
Chairman,
M.P. Rajya Sahakari Bank Mydt.,
T.T. Nagar,
Bhopal-462 003, (M.P.).
81. Shri Afsar H. Jafri,
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New Delhi.
82. Shri B.S. Patil,
A.T. Post, Kabenur,
Dist. Kolhapur,
Teh. Hatekangle,
Maharashtra.
83. Government of Meghalaya,
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85.	M.S. Swaminathan Research Foundation, Third Cross Street, Taramani Institutional Area, Taramani, Chennai-600113.
86.	Centre for Study of Global Trade System and Development, A-388, Sarita Vihar, New Delhi-110 044.
87.	All India Biotech Association, 'VIPPS Centre', 2, Local Shopping Centre, Block EFGH, Masjid Moth, G.K. II, New Delhi.
88.	Afsar H. Jafri, Programme Coordinator, Research Foundation for Science, Technology and Ecology, A-60, Hauz Khas, New Delhi.
89.	Monsanto Chemicals of India Limited, Agricultural Section-1016-1018, Visual Towers, Janak District Centre, Janakpuri, New Delhi-110 058.
90.	Shri Dwijen Rangnekar, Research Associate, School of Economics, Kingston University, Kingston, KT 1-2 EE U.K.
91.	Shri Biplab Dasgupta, M.P. Rajya Sabha.
92.	Shri Arun Ghosh, 78, Munirka Enclave, New Delhi.
93.	Shri Dhirubhai Rupareliya, Industrial Goal, 1/21, Ellora Co. Centre, Post Box No. G.P.O. 74 Ahmedabad.
94.	University of Agricultural Sciences, PPMC, VC's Office GKVK Campus, Bangalore-560 065.
95.	Paschim Banga Pradeshik Kisan Sabha, 208, Bipin Behari Ganguli Street, Calcutta-700 012
96.	Madhya Pradesh State Co-operative Bank Ltd., T.T. Nagar, Bhopal-462 003 (M.P.).
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98.	Shri Devinder Sharma, Forum for Biotechnology and Food Security, Post Box-4, Lajpat Nagar IV, New Delhi-110 024.

Memo No.	Name of Association with Address
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99.	Directorate of Agriculture, Bhopal, Madhya Pradesh.
100.	Dr. A.S. Yadav, President, Seed Technology Department, Moti Lal Vigyan Mahavidyalay, Bhopal, M.P.
101.	Shri Lakshminarayan Sharma, Ex-Minister for Agriculture and Cooperatives, B-3, Nishant Colony, Bhopal, Madhya Pradesh.
102.	Shri Krishna Bhatnagar, IAS Principal Secretary, Agriculture, Government of Rajasthan, Jaipur-302 005.
103.	Secretary, Agriculture Department, Govt. of Sikkim, Gangtok.
104.	Government of the Union Territory of Lakshadweep, Kavaratti.
105.	Government of Madhya Pradesh, Department of Agriculture.
106.	India Defence Foundation, G-1307, Chittaranjan Park, New Delhi-110 019.
107.	Government of Gujarat, Agriculture & Co-operation Department, Block No. 5, Sardar Bhavan, Sachivalaya, Gandhinagar-38 2010.
108.	Government of Karnataka, Secretariat, Agriculture & Horticulture Department, IVth Floor, M.S. Buildings, Bangalore.
109.	Jaiv Panchayat, Village Naganampatty, Dist. Dindigul, P.O. Oddanchairam, Tamilnadu.
110.	Liberty Institute, E-6, Press Apartments, Patparganj, Delhi-110 092.
111.	Shri Ravi Raman, Kerala Agricultural University, Kerala.
112.	Bhartiya Janatha Karshaka Morcha State Committee, BJP Office, Draupathi Buildings, M.G. Road, Ernakulam.
113.	Jcse Jonas, Asstt. Professor, Communication Centre, Kerala Agricultural University, Trivandrum.
114.	Kerala Agricultural Research and Management Agency (KARMA), 'Sarika', Ambalathara, Thiruvananthapuram-695 026.
115.	Shri M. Abdul Lathif, Government Homoeopathic Medical College, Thiruvananthapuram.
116.	Dr. K.N. Shyamasundaram Nair, Vice-Chancellor, Kerala Agricultural University, Thiruvananthapuram.

Memo No.	Name of Association with Address
117.	Dr. A.D. Damodaran, 9, Mangalam Lane, Sasthamangalam, Thiruvananthapuram-695 010.
118.	Karsha Kavedi, Kerala.
119.	Shri Venugopalan Nair, All India Kisan Sabha, Kerala State Committee, M.N. Memorial Building, Thycand, Trivandrum-14.
120.	Kerala Karshaka Sangham State Committee, TC-12/1336, Aikya Nagar, Kunnukuzhi, P.O., Thiruvananthapuram-37, Kerala.
121.	Government of West Bengal, Department of Agriculture, Writers Building, Calcutta-700 001.
122.	Shri Nandu Thapa, Ex. M.P. (Lok Sabha), Thapa House, Paljor Stadium Road, Gangtok-737 101, Sikkim.
123.	Kerala Forest Research Institute, Peechi-680653, Thrissur, Kerala.
124.	Shri K.L. Mehra, Director, ICAR, New Delhi.
125.	Government of Maharashtra, Tribal Development Department, Mantralaya, Mumbai-32.
126.	Shri S. Chandra Mohan, Mangalath Puthen Veedu, Vadasserikonam, P.O. Varkala.
127.	Govt. of Assam, Agriculture Department, Shri P.K. Buragohain, Deputy Secretary to the Govt. of Assam, Dispur, Guwahati.
128.	Rajasthan Agricultural University, Bikaner-334 006, Rajasthan.
129.	Dr. K.L. Jadav, National President, Bhartiya Kisan Sangh, 14/4, Member's Niwas, Sector-21, Gandhinagar, Gujarat.
130.	Dr. R.S. Paroda, Secretary, DARE and DG, ICAR, New Delhi.
131.	The Finance Secretary, Chandigarh Administration.
132.	Dr. M.P. Yadav, Director, Indian Veterinary Research Institute, Izatnagar, U.P.

APPENDIX IV
(vide para 14 of the Report)

List of Witnesses who Tendered Oral Evidence Before the Joint Committee

Name

1. Prof. M.S. Swaminathan,
M.S. Swaminathan Research Foundation,
Chennai.
2. Shri K. Rajan, IAS (Retd.),
Mumbai.
3. Dr. S.C. Tiwari
Varanasi-221 005.
4. Monsanto Enterprises Ltd.,
Mumbai.
(i) Dr. P.D. Muzumdar, Advisor.
(ii) Shri Rajendra Ketkar, Director-Cotton.
5. Shri N.K. Shukla, Joint Secretary, AIKS
All India Kisan Sabha,
New Delhi.
6. Shri Afsar H. Jafri
Research Foundation for Technology and Ecology,
New Delhi.
7. National Working Group on Patent Laws
New Delhi.
(i) Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System &
Development and Convenor,
National Working Group on Patent Laws.
(ii) Dr. Biswajit Dhar, Co-Convenor, National Working Group of Patent Laws.
8. Seed Association of India,
New Delhi.
(i) Shri R.S. Arora, Secretarys General, SAI and Managing Director, M/s Century Seeds Pvt. Ltd.
(ii) Dr. J.S. Sandhu, Director, M/s Proagro Seeds Co. Ltd.
(iii) Dr. A.S. Kataria, Director, SAI
9. Shri K.L. Jadhav, President, All India
Kisan Sangh, Gandhi Nagar, Gujarat.
10. Dr. Vandana Shiva, Director,
Navdanya, New Delhi.
11. Shri P.S. Vatsa,
President, (Delhi Pradesh), Bharatiya Kisan Sangh,
Delhi.
12. Dr. I.V. Subba Rao, Vice-Chancellor
Acharya N.G. Ranga Agricultural University, Hyderabad.

13. Dr. P.K. Singh, Joint Director (Research)
Indian Agricultural Research Institute, New Delhi.
14. Dr. P.K. Mishra,
Principal Secretary, (Agriculture)
Government of Gujarat.
15. Dr. Mehta
Vice-Chancellor, Gujarat Agricultural University
Gujarat.
16. Shri Gangani
Joint Director (Agriculture)
Government of Gujarat.
17. Dr. M.P.S. Kohli,
Director, CIFE,
Mumbai.

APPENDIX V
(*vide* para 16 of the Report)

REPRINT

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THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999

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THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS
BILL, 1999
A
BILL

to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants, and to give effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights.

WHEREAS the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, done at Marrakesh on the 15th day of April, 1994 provides for the establishment of the World Trade Organisation;

AND WHEREAS the Agreement on Trade Related Aspects of Intellectual Property Rights is part of the said Final Act;

AND WHEREAS India, having ratified the said Final Act, should *inter alia*, make provision for giving effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights relating to protection of plant varieties;

AND WHEREAS, to give effect to aforesaid sub-paragraph (b) of paragraph 3 of article 27, it is considered necessary to undertake measures for the protection of the rights of the plant breeders and farmers and to encourage the development of new varieties of plants;

BE it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Protection of Plant Varieties and Farmers' Rights Act, 1999.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "Authority" means the Protection of Plant Varieties and Farmers' Rights Authority established under sub-section (1) of section 3;

(b) "benefit sharing", in relation to a variety, means such proportion of the benefit accruing to a breeder of such variety or such proportion of the benefit accruing to the breeder from an agent or a licensee of such variety, as the case may be, for which a claimant shall be entitled as determined by the Authority under section 26;

(c) "breeder" means a person who has bred, discovered or developed any variety;

(d) "Chairperson" means the Chairperson of the Authority appointed under clause (a) of sub-section (5) of section 3;

(e) "convention country" means a country which has acceded to an international convention for the protection of plant varieties to which India has also acceded, or a country which has a law on protection of plant varieties on the basis of which India has entered into an agreement for granting plant breeders' right to the citizens of both the countries;

(f) "denomination", in relation to a variety or its propagating material or essentially derived variety or its propagating material, means the denomination of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, expressed by means of letters or a combination of letters and figures written in any language;

(g) "essential characteristics" means such heritable traits of a plant variety which are determined by the expression of one or more genes of other heritable determinants that contribute to the principal features, performance or value of the plant variety;

(h) "essentially derived variety", in respect of a variety (in this clause to be called "the initial variety"), shall be said to be essentially derived from such initial variety when it—

(i) is predominantly derived from such initial variety; or from a variety that is itself predominantly derived from such initial variety, while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety;

(ii) is clearly distinguishable from such initial variety; and

(iii) conforms to such initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of such initial variety except variation in such characteristics which result in the process of derivation;

(i) "extant variety" means a variety which is notified under section 5 of the Seeds Act, 1966 or is eligible for protection under section 13 or a variety about which there is common knowledge and includes the propagating material of such extant variety;

(j) "farmer" means any person who cultivates crops either by cultivating the land himself or through any other person and includes a person who conserves and preserves, severally or jointly, with any person any wild species or traditional varieties or adds value to such wild species or traditional varieties through selection and identification of their useful properties;

(k) "Gene Fund" means the National Gene Fund constituted under sub-section (1) of section 52;

(l) "germplasm" means a plant, in whole or in parts, and includes its propagules, namely, a seed, vegetative parts, tissue culture, cell culture, gene and deoxyribonucleic acid based sequences;

(m) "member" means a member of the Authority appointed under clause (b) of sub-section (5) of section 3 and includes the Member-Secretary;

(a) "plant", in relation to a cultivated plant and its wild relative, means any organism or a part thereof which belongs to the kingdom of plant and not included in the animal kingdom, but does not include micro-organism;

(o) "prescribed" means prescribed by rules made under this Act;

(p) "propagating material" means any plant or its component or part thereof including an intended seed which is capable of or suitable for regeneration into a plant;

(q) "Register" means a National Register of Plant Varieties referred to in section 12;

(r) "Registrar" means a Registrar of Plant Varieties appointed under sub-section (4) of section 11 and includes the Registrar-General;

(s) "Registrar-General" means the Registrar-General of Plant Varieties appointed under sub-section (3) of section 11;

(t) "Registry" means the Plant Varieties Registry referred to in sub-section (1) of section 11;

(u) "regulations" means regulations made by the Authority under this Act;

(v) "seed" means a type of living embryo or propagule capable of regeneration and giving rise to a plant which is true to such type;

(w) "variety", in relation to plants, means a plant grouping within a single botanical taxon of the lowest known rank, which can be—

(i) defined by the expression of the fundamental characteristics resulting from a given genotype of that plant grouping;

(ii) distinguished from any other plant grouping by expression of at least one of the said fundamental characteristics; and

(iii) considered as a unit with regard to its suitability for being propagated, which remains unchanged after such propagation and includes propagating material of such variety, extant variety, transgenic variety and essentially derived variety.

CHAPTER II

THE PLANT VARIETIES AND FARMERS' RIGHTS PROTECTION AUTHORITY

3. (1) The Central Government shall, by notification in the Official Gazette, establish an Authority to be known as the Protection of Plant Varieties and Farmers' Rights Authority for the purposes of this Act.

Establishment of Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of properties, both movable and immovable, and to contract, and shall by the said name sue and be sued.

(3) The head office of the Authority shall be at such place as the Central Government may, by notification in the Official Gazette, specify and the Authority may, with the previous approval of the Central Government, establish branch offices at other places in India.

(4) The Authority shall consist of a Chairperson and nine *ex officio* members.

(5) (a) The Chairperson to be appointed by the Central Government, shall be a person of outstanding calibre and eminence in the field of plant varietal research, or in the related field of agricultural development, and having not less than twenty-five years of practical experience in either field.

(b) The members of the Authority, to be appointed by the Central Government, shall be as follows, namely:—

(i) the Agriculture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, Member, *ex officio*;

(ii) the Deputy Director General incharge of Crop Sciences, Indian Council of Agricultural Research, New Delhi, Member, *ex officio*;

(iii) the Joint Secretary incharge of Seeds, Government of India, Department of Agriculture and Cooperation, Member, *ex officio*;

(iv) the Horticulture Commissioner, Government of India, Department of Agriculture and Cooperation, New Delhi, Member, *ex officio*;

(v) the Director, National Bureau of Plant Genetic Resources, New Delhi, Member, *ex officio*;

(vi) one member not below the rank of Joint Secretary to the Government of India, to represent the Department of Bio-technology of that Government, Member, *ex officio*;

(vii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry dealing with matters related to Environment and Forest of the Government of India, Member, *ex officio*;

(viii) one member not below the rank of Joint Secretary to the Government of India to represent the Ministry of Law of the Government of India, Member, *ex officio*;

(c) The Registrar General shall be the *ex officio* Member-Secretary of the Authority.

(6) The term of office of the Chairperson and the manner of filling the post shall be such as may be prescribed.

(7) The Chairperson shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed.

(8) The Chairperson may resign his office by giving notice thereof in writing to the Central Government and on such resignation being accepted, he shall be deemed to have vacated his office.

(9) On the resignation of the Chairperson or on the vacation of the office of Chairperson for any reasons, the Central Government may appoint one of the members to officiate as Chairperson till a regular Chairperson is appointed in accordance with clause (a) of sub-section (5).

4. (1) The Authority shall meet at such time and place and shall observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) as may be prescribed.

(2) The Chairperson of the Authority shall preside at the meetings of the Authority.

(3) If for any reason the Chairperson is unable to attend any meeting of the Authority, any member of the Authority chosen by the members present at the meeting shall preside at the meeting.

(4) All questions which come before any meeting of the Authority shall be decided by a majority of the votes of the members of the Authority present and voting and in the event of equality of votes, the Chairperson of the Authority or in his absence, the person presiding shall have and exercise a second or casting vote.

(5) Every member who is in any way, whether directly, indirectly or personally, concerned or interested in a matter to be decided at the meeting shall disclose the nature of his concern or interest and after such disclosure, the member concerned or interested shall not attend that meeting.

(6) No act or proceeding of the Authority shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Authority; or

(b) any defect in the appointment of a person acting as the Chairperson or a member of the Authority; or

(c) any irregularity in the procedure of the Authority not affecting the merits of the case.

5. (1) The Authority may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

Committees of Authority.

(2) The persons appointed as members of the committee under sub-section (1) shall be entitled to receive such allowances or fees for attending the meetings of the committee as may be fixed by the Central Government.

6. Subject to such control and restriction as may be prescribed, the Authority may appoint such other officers and employees as may be necessary for the efficient performance of its functions and the method of appointment, the scale of pay and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.

Officers and employees of Authority.

7. The Chairperson shall be the Chief Executive of the Authority and shall exercise such powers and perform such duties as may be prescribed.

Chairperson to be Chief Executive.

8. (1) It shall be the duty of the Authority to promote, by such measures as it thinks fit, the encouragement and development of new varieties of plants and protect the rights of the farmers and breeders with respect to those varieties of plants.

General functions of Authority.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the measures referred to in sub-section (1) may provide for—

(a) the registration of extant or new plant varieties to the researchers and breeders subject to such terms and conditions and in the manner as may be prescribed;

(b) developing characterisation and documentation of varieties;

(c) compulsory cataloguing facilities for all varieties of plants, seeds and germplasm;

(d) ensuring that seeds of the varieties registered under this Act are available to the farmers and providing for compulsory licensing of such varieties if the breeder of such varieties or any other person entitled to produce such variety under this Act does not arrange for production and sale of the seed in the manner as may be prescribed;

by collecting statistics with regard to plant varieties, seeds and germplasm for compilation and publication;

(f) ensure the maintenance of Register.

Authentication
of orders of
Authority.

9. All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other member authorised by the Authority in this behalf.

Delegation.

10. The Authority may, by general or special order in writing, delegate to the Chairperson, any member or officer of the Authority subject to such conditions or limitations, if any, as may be specified in the order, such of its powers and functions (except the power to make regulations under section 87) under this Act as it may deem necessary.

CHAPTER III

THE REGISTRY, REGISTRATION OF VARIETIES AND CONDITIONS OF REGISTRATION

Registrars shall
be such as may
be provided by
Registry and
Offices thereof.

(2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of plant varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(3) The Authority shall appoint a Registrar General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar General under this Act and may make regulations with respect to their duties and jurisdiction.

(5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

Meetin
Author

National
Register of
Plant
Varieties.

12. (1) For the purposes of this Act, a register called the National Register of Plant Varieties shall be kept at the head office of the Registry, wherein shall be entered the names of all the registered plant varieties with the names and addresses of their respective breeders, the right of such breeders in respect of the registered variety, the particulars of the denomination of each registered variety, its seed or other propagating material along with specification of salient features thereof and such other matters as may be prescribed.

(2) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Authority.

(3) There shall be kept at each branch office of the Registry a copy of the register and such other documents as the Central Government may, by notification in the Official Gazette, direct.

CHAPTER IV

REGISTRATION OF PLANT VARIETIES

13. Any person specified in section 15 may make an application to the Registrar for registration of any variety of such genera or species as specified under sub-section (2) of section 29.

Application for registration.

14. (1) A new variety shall be registered under this Act if it conforms to the criteria of novelty, distinctiveness, uniformity and stability;

Registerable varieties.

Provided that an extant variety shall be registered even if it does not conform to the criteria of novelty.

(2) Notwithstanding anything contained in sub-section (1), no variety shall be registered under this Act if such variety contains any gene or gene sequence involving any technology including terminator technology which is injurious to the life or health of human beings, animals or plants.

(3) For the purposes of sub-section (1), a new variety shall be deemed to be—

(a) novel, if, at the date of filling of the application for registration for protection, the propagating or harvested material of such variety has not been sold or otherwise disposed of by or with the consent of its breeder or his successor for the purposes of exploitation of such variety—

(i) in India, earlier than one year; or

(ii) outside India, in the case of trees or vines earlier than six years, or, in any other case, earlier than four years, before the date of filing such applications:

Provided that a trial of a new variety which has not been sold or otherwise disposed of shall not affect the right to protection:

Provided further that the fact that on the date of filing the application for registration the propagating or harvested material of such variety has become a matter of common knowledge other than through the aforesaid manner shall not affect the criteria of novelty for such variety;

(b) distinct, if it is clearly distinguishable by at least one essential characteristic from any other variety whose existence is a matter of common knowledge in any country at the time of filing of the application.

Explanation.—For the removal of doubts, it is hereby declared that the filing of an application for the granting of a breeder's right to a new variety or for entering such variety in the official register of varieties in any convention country shall be deemed to render that variety a matter of common knowledge from the date of the application in case the application leads to the granting of the breeder's right or to the entry of such variety in such official register, as the case may be;

(c) uniform, if it is sufficiently uniform in its essential characteristics subject to the variation that may be expected from the particular features of its propagation;

(d) stable, if its essential characteristics remain unchanged after repeated propagation or, in the case a particular cycle of propagation, at the end of each such cycle.

(4) A new variety shall not be registered under this Act if the denomination given to such variety—

(i) is not capable of identifying such variety; or
(ii) consists solely of figures; or

(iii) is liable to mislead or to cause confusion concerning the characteristics, value or identity of such variety or the identity of breeder of such variety; or

(iv) is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under this Act; or

(v) is likely to deceive the public or cause confusion in the public regarding the identity of such variety; or

(vi) is comprised of any matter likely to hurt the religious sentiments respectively of any class or section of the citizens of India; or

(vii) is comprised of scandalous or obscene matter; or

(viii) is prohibited for use as a name or emblem for any of the purposes mentioned in section 3 of the Emblems and Names (Protection of Improper Use) Act, 1950; or

(ix) is comprised of solely or partly of geographical name;

Provided that the Registrar may register a variety, the denomination of which comprises solely or partly of a geographical name, if he considers that the use of such denomination in respect of such variety is an honest use under the circumstances of the case.

12 of 1950.

CHAPTER V

APPLICATION FOR REGISTRATION

Persons who may make application.

15. (1) An application for registration under section 13 shall be made by—

(a) any person claiming to be the breeder of the variety; or

(b) any successor of the breeder of the variety; or

(c) any person being the assignee of the breeder of the variety in respect of the right to make such application; or

(d) any person authorised in the prescribed manner by a person specified under clauses (a) to (c) to make application on his behalf.

(2) An application under sub-section (1) may be made by any of the persons referred to therein individually or jointly with any other person.

Compulsory plant variety denomination.

16. (1) Every applicant shall assign a single and distinct denomination to a variety with respect to which he is seeking registration under this Act in accordance with the regulations.

(2) The Authority shall, having regard to the provisions of any international convention or treaty to which India has become a party, make regulations governing the assignment of denomination to a plant variety.

(3) Where the denomination assigned to the variety do not satisfy the requirements specified in the regulations, the Registrar may require the applicant to propose another denomination within such time as may be provided by such regulations.

(4) Every applicant shall cause the variety to which he is making the application under section 13, to be catalogued by such institution or centre as may be notified by the Central Government in the Official Gazette.

(5) Notwithstanding anything contained in the Trade and Merchandise Marks Act, 1958, a denomination assigned to a variety shall not be registered as a trade mark under that Act.

43 of 1958.

17. (1) Every application for registration under section 13 shall—

Form of application.

- (a) be with respect to a variety;
- (b) state the denomination assigned to such variety by the applicant;
- (c) be accompanied by an affidavit sworn by the applicant that such variety does not contain any gene or gene sequence involving terminator technology;
- (d) be in such form as may be prescribed;
- (e) contain a complete passport data of the parent lines from which the variety has been derived;
- (f) be accompanied by a statement containing the catalogue number and brief description of variety bringing out its characteristics of novelty, distinctiveness, uniformity and stability as required for registration;
- (g) be accompanied by such fees as may be prescribed; and
- (h) be accompanied by such other particulars as may be prescribed.

(2) Every application referred to in sub-section (1) shall be filed in the office of the Registrar.

(3) Where such application is made by virtue of a succession or an assignment of the right to apply for registration, there shall be furnished at the time of making the application, or within such period after making the application as may be prescribed, a proof of the right to make the application.

18. (1) Every applicant shall, along with the application for registration made under this Act, make available to the Registrar such quantities of seeds of a variety for registration of which such application is made, for the purpose of conducting tests to evaluate whether seeds of such variety along with parental material conform to the standards as may be specified by regulations.

Tests to be conducted.

(2) The applicant shall deposit such fee as may be prescribed for conducting tests referred to in sub-section (1).

(3) The tests under sub-section (1) shall be conducted in such manner and by such method as may be prescribed.

19. (1) On receipt of an application under section 13, the Registrar may, after making such inquiry as he thinks fit with respect to the particulars contained in such application, accept the application absolutely or subject to such conditions or limitations as he deems fit.

Acceptance of application or amendment thereof.

(2) Where the Registrar is satisfied that the application does not comply with the requirements of this Act or any rules or regulations made thereunder, he may, either—

(a) require the applicant to amend the application to his satisfaction; or

(b) reject the application;

Provided that no application shall be rejected unless the applicant has been given a reasonable opportunity of presenting his case.

20. (1) Where an application for registration of a variety has been accepted absolutely or subject to conditions or limitations under sub-section (1) of section 19, the Registrar shall, as soon as after its acceptance, cause such application together with the conditions or limitations, if any, subject to which it has been accepted and the specifications of the variety for registration of which such application is made including its photographs or drawings, to be advertised in the prescribed manner calling objections from the persons interested in the matter.

Advertisement of application.

(2) Any person may, within three months from the date of the advertisement of an application for registration or within such further period not exceeding thirty days in the aggregate as the Registrar on application made to him in the prescribed manner and on payment of the prescribed fee allows, give notice, in writing in the prescribed manner, to the Registrar, of his opposition to the registration.

(3) Opposition to the registration under sub-section (2) may be made on the following grounds, namely:—

- (a) that the person opposing the application is entitled to the breeder's right as against the applicant; or
- (b) that the variety is not registrable under this Act; or
- (c) that the grant of certificate of registration may not be in public interest.

(4) The Registrar shall serve a copy of the notice of opposition on the applicant for registration and, within two months from the receipt by the applicant of such copy of the notice of opposition, the applicant shall send to the Registrar in the prescribed manner a counter statement of the grounds on which he relies for his application, and if he does not do so, he shall be deemed to have abandoned his application.

(5) If the applicant sends such counter statement, the Registrar shall serve a copy thereof on the person giving notice of opposition.

(6) Any evidence upon which the opponent and the applicant may rely shall be submitted, in the manner prescribed and within the time prescribed, to the Registrar and the Registrar shall give an opportunity to them to be heard, if so desired.

(7) The Registrar shall, after hearing the parties, if so required, and considering the evidence, decide whether and subject to what conditions or limitations, if any, the registration is to be permitted and may take into account a ground of objection whether relied upon by the opponent or not.

(8) Where a person giving notice of opposition or an applicant sending a counter statement after receipt of a copy of such notice neither resides nor carries on business in India, the Registrar may require him to give security for the cost of proceedings before him and in default of such security being duly given may treat the opposition or application, as the case may be, as abandoned.

(9) The Registrar may, on request, permit correction of any error in, or any amendment of, a notice of opposition or a counter statement on such terms as he may think fit.

Registrar to consider grounds of opposition.

21. The Registrar shall consider all the grounds on which the application has been opposed and after giving reasons for his decision, by order, uphold or reject the opposition.

CHAPTER VI

REGISTRATION OF ESSENTIALLY DERIVED VARIETY

Registration of essentially derived variety.

22. (1) Notwithstanding anything contained in Chapters IV and V, registration of essentially derived variety of the general or species specified under sub-section (2) of section 29 shall be done in accordance with the provisions of this Chapter.

(2) An application for the registration of an essentially derived variety of the genera or species specified under sub-section (2) of section 21 by the Central Government shall be made to the Registrar by or on behalf of any person referred to and in the manner specified in, section 13 as if for the word "variety", the words "essentially derived variety" have been substituted therein and shall be accompanied by such documents and fee as may be prescribed.

(3) When the Registrar is satisfied that the requirements of sub-section (1) have been complied with to his satisfaction, he shall forward the application with his report and all the relevant documents to the Authority.

(4) On receipt of an application under sub-section (3), the Authority shall get examined such essentially derived variety to determine as to whether the essentially derived variety is a variety derived from the initial variety by conducting such tests and following such procedure as may be prescribed.

(5) When the Authority is satisfied on the report of test referred to in sub-section (4) that the essentially derived variety has been derived from the initial variety, it may direct the Registrar to register such essentially derived variety and the Registrar shall comply with the direction of the Authority.

(6) Where the Authority is not satisfied on the report of test referred to in sub-section (4) that the essentially derived variety has been derived from the initial variety it shall refuse the application.

(7) The rights of breeder of a variety contained in section 28 shall apply to the breeder of essentially derived variety.

Provided that the authorisation by the breeder of initial variety to the breeder of essentially derived variety may be subject to such terms and conditions as both the parties may mutually agree upon.

(8) An essentially derived variety shall not be registered under this section unless it satisfies the requirements of section 14 as if for the word "variety", the words "essentially derived variety" have been substituted therein.

(9) When an essentially derived variety has been registered by the Registrar in compliance with the direction of the Authority under sub-section (5), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with seal of the Registry and send a copy thereof to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information.

CHAPTER VII

POWER OF AUTHORITY AND DURATION AND EFFECT OF REGISTRATION

23. In all proceedings under this Act before the Authority or the Registrar—

Powers of Authority and Registrar.

(a) the Authority or the Registrar, as the case may be shall have all the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents and issuing commissions for the examination of witnesses;

(b) the Authority or the Registrar may, subject to any rules made in this behalf under this Act, make such orders as to cost as it considers reasonable and any such order shall be executable as a decree of a civil court.

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ertificate of
gistration.

24. (1) When an application for registration of a variety (other than an essentially derived variety), has been accepted and either—

(a) the application has not been opposed and the time of notice of opposition has expired; or

(b) the application has been opposed and the opposition has been rejected,

the Registrar shall register the variety.

(2) On the registration of the variety (other than an essentially derived variety), the Registrar shall issue to the applicant a certificate of registration in the prescribed form and sealed with the seal of the Registry and send a copy to the Authority for determination of benefit sharing and to such other authority, as may be prescribed, for information.

(3) Where registration of a variety (other than an essentially derived variety), is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may after giving notice to the applicant in the prescribed manner treat the application as abandoned unless it is completed within the time specified in that behalf in the notice.

(4) The Registrar may amend the Register or a certificate of registration for the purpose of correcting a clerical error or an obvious mistake.

(5) The Registrar shall have power to issue such directions to protect the interests of a breeder against any abusive act committed by any third party during the period between filing of application for registration and decision taken by the Authority on such application.

(6) The certificate of registration issued under this section or sub-section (9) of section 22 shall be valid for three years and may be renewed or further renewed, as the case may be, for a like period on payment of such fee as may be fixed by the rules made in this behalf subject to the condition that the total aggregate period of validity shall not exceed—

(i) in the case of trees and vines, eighteen years from the date of registration of variety;

(ii) in the case of extant variety, fifteen years from the date of the notification of that variety by the Central Government under the Seeds Act, 1996; and

(iii) in the other cases, fifteen years from the date of registration of variety.

Publication of
list of varieties.

25. The Authority shall, within such intervals as it thinks appropriate, publish the list of varieties which have been registered during that interval.

Determination
of benefit
sharing by
Authority.

26. (1) On receipt of copy of the certificate of registration under sub-section (9) of section 22 or sub-section (2) of section 24, the Authority shall publish such contents of the certificate and invite the claims of the benefit sharing to the variety registered under such certificate in the manner as may be prescribed.

(2) On invitation of the claims under sub-section (1), any person or group of persons or non-governmental organisation shall submit its claim of benefit sharing to such variety in the prescribed form in duplicate within such period and accompanied within such fee, as may be prescribed.

(3) On receiving a claim under sub-section (2), the Authority shall send a copy of such claims to the breeder of the variety registered under such certificate and the breeder may, on receipt of such copy, submit his opposition to such claim within such period and in such manner as may be prescribed.

(4) The Authority shall, after giving an opportunity of being heard to the parties, dispose of the claim received under sub-section (2).

(5) While disposing of the claim under sub-section (4) the Authority shall explicitly indicate in its order the amount of the benefit sharing, if any, for which the claimant shall be entitled and shall take into consideration the following matters, namely:—

(a) the extant and nature of the use of genetic material of the claimant in the development of the variety relating to which the benefit sharing has been claimed;

(b) the commercial utility and demand in the market of the variety relating to which the benefit sharing has been claimed.

(6) The amount of benefit sharing to a variety determined under this section shall be deposited by the breeder of such variety in the manner referred to under clause (a) of sub-section (1) of section 52 in the Gene Fund.

(7) The amount of benefit sharing determined under this section shall, on a reference made by the Authority in the prescribed manner, be recoverable as an arrear of land revenue by the District Magistrate within whose local limits of jurisdiction the breeder liable for such benefit sharing resides.

27. The Authority may by order direct any breeder to deposit such quantity of seeds or propagating material including parental line seeds as may be specified in the regulations for reproduction purposes at the breeder's expense within such time as may be specified in that order.

Breeder to deposit seeds or propagating material.

28. (1) Subject to the other provisions of this Act, a certificate of registration for a variety issued under this Act shall confer an exclusive right on the breeder or his successor, his agent or licensee, to produce, sell, market, distribute, import or export the variety:

Registration to confer right.

Provided that in the case of an extant variety, unless a breeder or his successor establishes his right, the Central Government, and in case where such extant variety is notified for a State or for any area thereof under section 5 of the Seeds Act, 1966 the State Government, shall be deemed to be the owner of such right.

(2) A breeder may authorise any person to produce, sell, market or otherwise deal with the variety registered under this Act subject to such limitations and conditions as may be specified in the regulations.

(3) Every authorisation under this section shall be in such form as may be specified by regulations.

(4) Where an agent or a licensee referred to in sub-section (1) becomes entitled to produce, sell, market, distribute, import or export a variety, he shall apply in the prescribed manner and with the prescribed fee to the Registrar to register his title and the Registrar shall on receipt of application and on proof of title to his satisfaction, register him as an agent or a licensee, as the case may be, in respect of the variety for which he is entitled for such right, and shall cause particulars of such entitlement and conditions or restrictions, if any, subject to which such entitlement is made, to be entered in the register:

Provided that when the validity of such entitlement is in dispute between the parties, the Registrar may refuse to register the entitlement and refer the matter in the prescribed manner to the Authority and withhold the registration of such entitlement until the right of parties in dispute so referred to has been determined by the Authority.

(5) The Registrar shall issue a certificate of registration under sub-section (4) to the applicant after such registration and shall enter in the certificate the brief conditions of entitlement, if any, in the prescribed manner, and such certificate shall be the conclusive proof of such entitlement and the conditions or restriction thereof, if any, except when the validity of such registration is challenged.

(6) Subject to any agreement subsisting between the parties, an agent or licensee of a right to a variety registered under sub-section (4) shall be entitled to call upon the breeder or his successor thereof to take proceedings to prevent infringement thereof, and if the breeder or his successor refuses or neglect to do so within three months after being so called upon, such registered agent or licensee may institute proceedings for infringement in his own name as if he were the breeder making the breeder or his successor a defendant.

(7) Notwithstanding anything contained in any other law, a breeder or his successor so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(8) Nothing in this section shall confer on a registered agent or registered licensee of a variety any right to transfer such right further thereof.

(9) Without prejudice to the registration under sub-section (4), the terms of registration—

(a) may be varied by the Registrar as regards the variety in respect of which, or any condition or restrictions subject to which, it has effect on receipt of an application in the prescribed manner of the registered breeder of such variety, or his successors;

(b) may be cancelled by the Registrar on the application in the prescribed manner of the registered breeder of such variety or his successor or of the registered agent or registered licensee of such variety;

(c) may be cancelled by the Registrar on the application in the prescribed manner of any person other than the breeder, his successor, the registered agent or the registered licensee on any of the following grounds, namely:—

(i) that the breeder of a variety or his successor or the registered agent or registered licensee of such variety, misrepresented, or failed to disclose, some fact material to the application for registration under sub-section (4) which if accurately represented or disclosed would have justified the refusal of the application for registration of the registered agent or registered licensee;

(ii) that the registration ought not to have been effected having regard to the right vested in the applicant by virtue of a contract in the performance of which he is interested;

(d) may be cancelled by the Registrar on the application in the prescribed manner of the breeder of registered variety, or his successor on the ground that any stipulation in the agreement between the registered agent or the registered licensee, as the case may be, and such breeder or his successor regarding the variety for which such agent or licensee is registered is not being enforced or is not being complied with;

(e) may be cancelled by the Registrar on the application of any person in the prescribed manner on the ground that the variety relating to the registration is no longer existing.

(10) The Registrar shall issue notice in the prescribed manner of every application under this section to the registered breeder of a variety or his successor and to each registered agent or registered licensee (not being the applicant) of such variety.

(11) The Registrar shall before making any order under sub-section (9) forward the application made in that behalf along with any objection received by any party after notice under sub-section (10) for the consideration of the Authority, and the Authority may, after making such enquiry as it thinks fit, issue such directions to the Registrar as it thinks fit and the Registrar shall dispose of the application in accordance with such directions.

29. (1) Notwithstanding anything contained in this Act, no registration of a variety shall be made under this Act in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal and plant life and health or to avoid serious prejudice to the environment.

Exclusion of certain varieties.

(2) The Central Government shall by notification in the Official Gazette, specify the genera or species for the purposes of registration of varieties under this Act.

(3) The Central Government shall not exclude any genus or species from the list of genera or species specified in a notification issued under sub-section (2) except in public interest.

(4) Any variety belonging to the genera or species excluded under sub-section (3) shall not be eligible for any protection under this Act.

(5) any variety belonging to the genera or species excluded under sub-section (3) which has been protected under this Act before such exclusion shall continue to avail such protection irrespective of the exclusion.

30. Nothing contained in this Act shall prevent—

(a) the use of any variety registered under this Act by any person using such variety for conducting experiment or research; and

Researcher's rights.

(b) the use of a variety by any person as an initial source of variety for the purpose of creating other varieties:

Provided that the authorisation of the breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Farmer's right.

31. Nothing contained in this Act shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under this Act:

Provided that a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.

Special provisions relating to applications for registration from citizens of convention countries.

32. (1) With a view to the fulfilment of a treaty, convention or arrangement with any country outside India which affords to citizens of India similar privileges as granted to its own citizen, the Central Government may, by notification in the Official Gazette, declare such country to be a convention country for the purposes of this Act.

(2) Where a person has made an application for the granting of a breeder's right to a variety or for entering such variety in the official register of varieties in a convention country and that person or any person entitled to make application on his behalf under section 13 or section 22 makes an application for the registration of such variety in India within twelve months after the date on which the application was made in the convention country, such variety shall, if registered under this Act, be registered as of the date on which the application was made in the convention country and that date shall be deemed for the purposes of this Act to be the date of registration.

(3) Where applications have been made for granting of a breeder's right to a variety or for entering such variety in the official register of varieties in two or more convention countries, the period of twelve months referred to in the last preceding sub-section shall be reckoned from the date on which the earlier or earliest of those applications was made.

(4) Nothing in this Act shall entitle the breeder of a registered variety for infringement of rights other than protected under this Act which took place prior to the date of application of registration under this Act.

Provision as to reciprocity.

33. Where any country specified by the Central Government in this behalf by notification in the Official Gazette under sub-section (1) of section 32 does not accord to citizens of India the same rights in respect of the registration and protection of a variety as it accords to its own nationals, no nationals of such country shall be entitled, either solely or jointly with any other person, to apply for the registration of a variety or be entitled to get a variety registered under this Act.

Prohibition from production, sale, etc., of plant variety.

34. Save as otherwise provided in this Act, no person shall—

- (a) produce or cause to be produced;
- (b) sell or offer to sell or cause to be sold or cause to be offered to be sold;
- (c) market or cause to be marketed;
- (d) export or cause to be exported;
- (e) import or cause to be imported;

any variety registered under this Act unless he has obtained authorisation as an agent or licensee from the registered breeder of such variety and has been registered as such under this Act.

CHAPTER VIII

SURRENDER AND REVOCATION OF CERTIFICATE

35. (1) A breeder of a variety registered under this Act may, at any time by giving notice in the prescribed manner to the Registrar, offer to surrender his certificate of registration.

Surrender of certificate of registration.

(2) Where such an offer is made, the Registrar shall notify in the prescribed manner every registered agent or registered licensee relating to such certificate.

(3) Any of such agent or licensee may, within the prescribed period after such notification give notice to the Registrar of his opposition to the surrender and where any such notice is given, the Registrar shall intimate the contents of such notice to the breeder of such variety.

(4) If the Registrar is satisfied after hearing the applicant and all the opponents, if desirous of being heard, that the certificate of registration may properly be surrendered, he may accept the offer and by order revoke the certificate of registration.

36. Subject to the provisions contained in this Act, the protection granted to a breeder in respect of a variety may, on the application in the prescribed manner of any person interested, be revoked by the Authority on any of the following grounds, namely:—

Revocation of protection on certain grounds.

(a) that the grant of the certificate of registration has been based on incorrect information furnished by the applicant;

(b) that the certificate of registration has been granted to a person who is not eligible for protection under this Act;

(c) that the breeder did not provide the Registrar with such information, documents or material as required for registration under this Act,

(d) that the breeder has failed to provide an alternative denomination of the variety which is the subject matter of the registration to the Registrar having jurisdiction in case where the earlier denomination of such variety provided to the Registrar is not permissible for registration under this Act;

(e) that the breeder did not provide the necessary seeds or propagating material to the person to whom compulsory licence has been issued under section 41 regarding the variety in respect of which registration certificate has been issued to such breeder;

(f) that the breeder has not complied with the provisions of this Act or provisions of rules or regulations made thereunder;

(g) that the breeder has failed to provide the passport date of the parent lines from which the variety, in respect of which registration certificate has been issued to such breeder, is derived;

(h) that the breeder has failed to comply with the directions of the Authority issued under this Act;

(i) that the grant of the Certificate of registration is not in the public interest:

Provided that no such protection shall be revoked unless the breeder is given a reasonable opportunity to file objection and of being heard in the matter.

37. (1) The Authority may, with the prior approval of the Central Government and after notification in the Official Gazette, impose a fee by way of royalty to be paid annually by every breeder of a variety agent and licensee registered under this Act for the retention of their registration under this Act.

Payment of annual fee and forfeiture of registration in default thereof.

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(2) If any breeder, agent or licensee fails to deposit the fee referred to in sub-section (1) imposed upon him under that sub-section in the prescribed manner up to two consecutive years, the Authority shall issue notice to such breeder, agent or licensee and on service of such notice if he fails to comply with the direction in the notice, the Authority shall declare all the protection admissible under registration certificate issued to such breeder or agent or licensee forfeited.

(3) The arrears of fee imposed under sub-section (1) shall be deemed to be the arrears of land revenue and shall be recoverable accordingly.

CHAPTER IX

RECTIFICATION AND CORRECTION OF REGISTER

Power to cancel
or change
registration and
to rectify the
Register.

38. (1) On an application made in the prescribed manner to the Registrar by any person aggrieved, the Registrar may make such order as he may think fit for cancelling or changing any certificate of registration issued under this Act on the ground of any contravention of the provisions of this Act or failure to observe a condition subject to which such registration certificate is issued.

(2) Any person aggrieved by the absence or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, may apply in the prescribed manner to the Registrar having jurisdiction and the Registrar may make such order for making, expunging or varying the entry as he may think fit.

(3) The Registrar may in any proceeding under this section decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(4) The Registrar, on his own motion, may, after giving notice in the prescribed manner to the parties concerned and after giving them an opportunity of being heard, make any order referred to in sub-section (1) or sub-section (2).

Correction of
Register.

39. (1) The Registrar may, on an application in the prescribed manner by the breeder of a variety registered under this Act,—

(a) correct any error in the Register in the name, address or description of such breeder or any other entry relating to such variety;

(b) enter in the register any change in the name, address or description of such breeder;

(c) cancel the entry in the register of the variety in respect of which such application is made; and may make any consequential amendment or alteration in the certificate of registration and for that purpose require the certificate of registration to be produced to him.

(2) The Registrar may, on application made in the prescribed manner by a registered agent or a registered licensee of a variety and after notice to the registered breeder of such variety, correct any error, or enter any change, in the name, address or description of such registered agent or registered licensee, as the case may be, in the register or certificate of registration issued under this Act.

Alteration of
denomination of
a registered
variety.

40. (1) The breeder of a variety registered under this Act may apply in the prescribed manner to the Registrar to delete any part or to add to or alter the denomination of such variety in any manner not substantially affecting the identity thereof, and the Registrar may refuse leave or may grant it on such terms and subject to such limitations as he may think fit to avoid any conflict with the rights of other breeders of the varieties registered under this Act.

(2) The Registrar may cause an application under this section to be advertised in the prescribed manner in any case where it appears to him that it is expedient so to do, and where he does so, if within the prescribed time from the date of the advertisement any person gives notice to the Registrar in the prescribed manner of opposition to the application, the Registrar shall, after hearing the parties if so required, decide the matter.

(3) Where leave is granted under this section, the denomination of the variety as altered shall be advertised in the prescribed manner, unless the application has already been advertised under sub-section (2).

CHAPTER X

COMPULSORY LICENCE

41. (1) At any time, after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seeds or other propagating material of the variety have not been satisfied or that the seed of other propagating material of the variety is not available to the public at a reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seed or other propagating material of that variety.

Power of Authority to make order for compulsory licence in certain circumstances.

(2) Every application under sub-section (1) shall contain a statement of the nature of the applicant's interest together with such particulars as may be prescribed and the facts upon which the application is based.

(3) The Authority, if satisfied after giving an opportunity to the breeder of such variety, to file opposition and after hearing the parties, on the issue that the reasonable requirements of the public with respect to the variety have not been satisfied or that the variety is not available to the public at a reasonable price, may order such breeder to grant a licence to the applicant upon such terms and conditions as it may deem fit and send a copy of such order to the Registrar to register such licence under sub-section (4) of section 28 on payment of such fee by the applicant as is referred to in that sub-section.

42. In determining the question as to whether the reasonable requirements of the public for seeds of a variety or its propagating material as referred to in sub-section (1) or sub-section (3) of section 41, the Authority shall take into account—

When the requirement of public deemed to have not been satisfied.

(i) the nature of the variety, the time which has elapsed since the grant of the certificate of registration of the variety and the measures taken by the breeder or any registered licensee of the variety to meet the requirement of the public; and

(ii) the capacity, ability and technical competence of the applicant to produce and market the variety to meet the requirement of the public.

43. (1) If the breeder of a variety registered under this Act in respect of which any application has been pending before the Authority under section 41 makes a written request to the Authority on the ground that due to any reasonable factor, such breeder has been unable to produce seed or other propagating material of the variety on a commercial scale to an adequate extent till the date of making such request, the Authority may on being satisfied that the said ground is reasonable, adjourn the hearing of such application for such period not exceeding twelve months in aggregate as it may consider sufficient for optimum production of the seed or propagating material of such variety or essentially derived variety, as the case may be, by such breeder.

Adjournment of application for grant of compulsory licence.

(2) No adjournment of the application under sub-section (1) shall be granted unless the Authority is satisfied that the breeder of the variety registered under this Act in respect of which such application is made has taken immediate measures to meet the reasonable requirements of the public for the seeds or other propagating material of such variety.

Duration of compulsory licence.

44. The Authority shall determine the duration of the compulsory licences granted under this Chapter and such duration may vary from case to case keeping in view the gestation periods and other relevant factors and when a compulsory licence is granted the prescribed authority shall in the prescribed manner make available to the licensee of such compulsory licence, the reproductive material of the variety relating to such compulsory licence stored in the National Gene Bank or any other centre.

Authority to settle terms and conditions of licence.

45. (1) The Authority shall, while determining the terms and conditions of a compulsory licence under the provisions of this Chapter, endeavour to secure—

(i) reasonable royalty and other remuneration to the breeder of the variety relating to the compulsory licence having regard to the nature of the variety, the expenditure incurred by such breeder in breeding the variety or for developing it and other relevant factors;

(ii) that the compulsory licensee of such variety possesses the adequate means to provide to the farmers, the seeds or its other propagating material of such variety timely and at reasonable market price.

(2) No compulsory licence granted by the Authority shall authorise the licensee to import the variety relating to such licence or any seed or other propagating material of such variety from abroad where such import would constitute an infringement of the rights of the breeder of such variety.

Revocation of compulsory licence.

46. (1) The Authority may on its own motion or on application from an aggrieved person made to it in the prescribed form, if it is satisfied that a compulsory licensee registered under this Chapter has violated any terms or conditions of his licence or it is not appropriate to continue further such licence in public interest, it may after giving such licensee an opportunity to file opposition and of being heard make order to revoke such licence.

(2) When a licence is revoked under sub-section (1) by an order of the Authority, the Authority shall send a copy of such order to the Registrar having jurisdiction to rectify the entry or correct the register relating to such revocation and the Registrar shall rectify the entry or correct the register accordingly.

Modification of compulsory licence.

47. The Authority may on its own motion or on application from the licensee of a compulsory licence, after providing the opportunity of being heard to the breeder of the variety registered under this Act relating to such compulsory licence, if it considers, in public interest, so to do, modify, by order, such terms and conditions as it thinks fit and send a copy of such order to the Registrar having jurisdiction to correct the entries and register according to such modifications and the Registrar shall ensure such corrections to be made accordingly.

Rights of communities.

48. (1) Any person, group of persons (whether actively engaged in farming or not) or any governmental or non-governmental organisation may on behalf of any village or local community, file in any centre notified in the Official Gazette by the Authority in this behalf with the previous approval of the Central Government, any claim attributable to the contribution of the people of that village or local community in the evolution of any variety for the purpose of staking a claim on behalf of such village or local community.

(2) Where any claim is made under sub-section (1), the centre notified under that sub-section may verify the claim made by such person or group of persons of such village or local community or such governmental or non-governmental organisation in such manner as it deems fit and if it is satisfied that such village or local community has contributed significantly to the evolution of the variety which has been registered under this Act, it shall report its findings to the Authority.

(3) When the Authority, on a report under sub-section (2) is satisfied, after such enquiry as it may deem fit, that the variety with which the report is related has been registered under the provisions of this Act, it may issue notice in the prescribed manner to the breeder of that variety and after providing opportunity to such breeder to file objection in the prescribed manner and of being heard, it may subject to any limit notified by the Central Government, by order, grant such sum of compensation to be paid to a person or group of persons or governmental or non-governmental organisation which has made report to the Authority, as it may deem fit.

(4) Any compensation granted under sub-section (3) shall be deposited by the breeder of the variety in the Gene Fund.

(5) The compensation referred to in sub-section (3) shall be deemed to be an arrear of land revenue and shall be recoverable by the Authority accordingly.

49. (1) The Central Government shall, for the purposes of section 48 and clause (d) of sub-section (1) of section 52 frame, by notification in the Official Gazette, one or more schemes.

Framing of scheme, etc.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the scheme may provide for all or any of the following matters, namely:—

- (a) the registration of the claims for the purposes of section 48 under the scheme and all matters connected with such registration;
- (b) the processing of such claims for securing their enforcement and matters connected therewith;
- (c) the maintenance of records and registers in respect of such claims;
- (d) the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of such claims;
- (e) the procedure for disbursal or apportionment by the Authority in the event of dispute regarding such claims;
- (f) the utilisation of benefit sharing for the purposes relating to breeding, discovery or development of varieties;
- (g) the maintenance and audit of accounts with respect to the amounts referred to in clause (d).

CHAPTER XI

APPEALS

50. (1) An appeal shall be preferred to the High Court within the Appeals. prescribed period from any—

- (a) order or decision of the Authority or Registrar relating to registration of a variety; or
- (b) registration as an agent of a variety; or

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(c) granting of compulsory licence, or registration of Compulsory licensee, of a variety; or

(d) determining the benefit sharing by the Authority;

(e) order or decision of the Central Government regarding revocation of compulsory licence or modification of compulsory licence; or

(f) order or decision of Authority regarding payment of compensation, made under this Act or the rules made thereunder.

(2) Every such appeal shall be preferred by petition in writing and shall be in such form and shall contain such particulars as may be specified by rules made under section 51.

(3) Every such appeal shall be heard by a single Judge of the High Court:

Provided that any such Judge may, if he so thinks fit, refer the appeal at any stage of the proceeding to a Bench of the High Court.

(4) Where an appeal is heard by a single Judge, a further appeal shall lie to a Bench of the High Court.

(5) The High Court in disposing of an appeal under this section shall have the power to make any order which the Authority or the Registrar could make under this Act.

(6) Subject to the provisions of this Act and the rules made thereunder, the provisions of the Code of Civil Procedure, 1908, shall apply to appeals before a High Court under this Act.

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Power of High
Court to make
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Gene Fund.

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CHAPTER XII

NATIONAL GENE FUND

52. (1) The Central Government shall constitute a Fund to be called the National Gene Fund and there shall be credited thereto—

(a) the benefit sharing received in the prescribed manner from the breeder of a variety or an essentially derived variety registered under this Act or propagating material of such variety or essentially derived variety, as the case may be;

(b) the annual fee payable to the Authority by way of royalty under sub-section (1) of section 37;

(c) the compensation deposited in the Gene Fund under sub-section (4) of section 48;

(d) the contribution from any national and international organisation and other sources.

(2) The Gene Fund shall be applied for meeting—

(a) any amount to be paid by way of benefit sharing under sub-section (5) of section 26;

(b) the compensation payable under sub-section (3) of section 48;

(c) the expenditure for supporting the conservation and sustainable use of genetic resources including *in-situ* and *ex-situ* collections;

(d) the other expenditures of the schemes relating to benefit sharing framed under section 49.

CHAPTER XIII

FINANCE, ACCOUNTS AND AUDIT

53. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Authority grants and loans of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

54. (1) There shall be constituted a fund to be called the Protection of Plant Varieties Authority Account and there shall be credited thereto—

Authority Fund.

(a) all grants and loans made to the Authority by the Central Government under section 53;

(b) all fees received by the Authority and the Registrars except the annual fee by way of royalty under sub-section (1) of section 37;

(c) all sums received by the Authority from such other sources as may be decided upon by the Central Government.

(2) The Protection of Plant Varieties Authority Accounts shall be applied for meeting—

(a) the salaries, allowances and other remuneration of the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members;

(b) the other expenses of the Authority in connection with the discharge of its functions and for purposes of this Act.

55. (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records (including the accounts and other relevant records of the Gene Fund) and prepare an annual statement of account in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Budget,
accounts and
audit.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor General of India and any other person appointed by him in connection with the audit of the accounts of the Authority shall have the same right and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

56. The Chairperson shall exercise such financial and administrative powers over the functions of the Authority as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to a member or any

Financial and
administrative
powers of the
Chairperson.

other officer of the Authority subject to the condition that the member or such officer shall, while exercising such delegated powers, continue to be under the direction, control and supervision of the Chairperson.

CHAPTER XIV

INFRINGEMENT

Infringement.

57. Subject to the provisions of this Act, a right established under this Act is infringed by a person—

(a) who, not being the breeder of a variety registered under this Act or a registered agent or registered licensee of that variety, sells, exports, imports or produces such variety without the permission of its breeder or within the scope of a registered licence or registered agency without permission of the registered licensee or registered agent, as the case may be;

(b) who uses, sells, exports, imports or produces any other variety giving such variety, the denomination identical with or deceptively similar to the denomination of a variety registered under this Act in such manner as to cause confusion in the mind of general people in identifying such variety so registered.

Suit for infringement, etc.

58. (1) No suit—

- (a) for the infringement of a variety registered under this Act; or
- (b) relating to any right in a variety registered under this Act,

shall be instituted in any court inferior to a District Court having jurisdiction to try the suit.

(2) For the purpose of clauses (a) and (b) of sub-section (1), "District Court having jurisdiction" shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or proceeding, the person instituting the suit or other proceeding, or, where there are more than one such person any of them actually and voluntarily resides or carries on business or personally works for gain.

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Relief in suits for infringement.

59. (1) The relief which a court may grant in any suit for infringement referred to in section 58 includes an injunction and at the option of the plaintiff, either damages or a share of the profits.

(2) The order of injunction under sub-section (1) may include an *ex parte* injunction or any interlocutory order for any of the following matters, namely:—

- (a) for discovery of documents;

(b) preserving of infringing variety or documents or other evidence which are related to the subject matter of the suit;

(c) restraining the defendant from disposing of or dealing with his assets in a matter which may adversely affect plaintiff's ability to recover damages, costs or other pecuniary remedies which may be finally awarded to the plaintiff.

Opinion of scientific adviser.

60. (1) When the court has to form an opinion upon any question of fact or a scientific issue, such court may appoint an independent scientific adviser to suggest it or to enquire and report upon the matter to enable it to form the desired opinion.

(2) The scientific adviser may be paid such remuneration of expenses as the court may fix.

CHAPTER XV OFFENCES, PENALTIES AND PROCEDURE

61.(1) No person other than the breeder of a variety registered under this Act or a registered licensee or registered agent thereof shall use the denomination of that variety in the manner as may be prescribed.

(2) A person shall be deemed to apply the denomination of a variety registered under this Act who—

(a) applies it to the variety itself; or

(b) applies it to any package in or with which the variety is sold, or exposed for sale, or had in possession such package for sale or for any purpose of trade or production; or

(c) places, encloses or annexes the variety which are sold, or exposed for sale, or had in possession for sale or for any purpose of trade or production, in or with any package or other thing to which the denomination of such variety registered under this Act has been applied; or

(d) uses the denomination of such variety registered under this Act in any manner reasonably likely to lead to the belief that the variety or its propagating material in connection with which it is used is designated or described by that denomination; or

(e) in relation to the variety or uses such denomination in any advertisement, invoice, catalogue, business letter, business paper, price list or other commercial document and such variety is delivered to a person in pursuance of a request or order made by reference to the denomination as so used.

(3) A denomination shall be deemed to be applied to a variety whether it is woven in, impressed on, or otherwise worked into, or annexed or affixed to, such variety or to any package or other thing.

62.(1) A person shall be deemed to falsely apply the denomination of a variety registered under this Act who, without the assent of the breeder of such variety,—

(a) applies such denomination or a deceptively similar denomination to any variety or any package containing such variety.

(b) uses any package bearing a denomination which is identical with or deceptively similar to the denomination of such variety registered under this Act, for the purpose of packing, filling or wrapping therein any variety other than such variety registered under this Act.

(2) Any denomination of a variety registered under this Act falsely applied as mentioned in sub-section (1), is in this Act referred to as false denomination.

(3) In any prosecution for falsely applying a denomination of a variety registered under this Act, the burden of proving the assent of the breeder of such variety shall lie on the accused.

63. (1) Any person who—

(a) applies any false denomination to a variety; or

(b) indicates the false name of a country or place or false name and address of the breeder of the variety registered under this Act in course of trading such variety,

shall unless he proves that he acted, without intent to defraud, be punishable with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

Prohibition to apply the denomination of a registered variety.

Meaning of falsely applying the denomination of a registered variety.

Penalty for applying false denomination, etc.

Penalty for selling varieties to which false denomination is applied, etc.

64. Any person who sells or exposes for sale, or has in his possession for sale or for any purpose of trade or production any variety to which any false denomination is applied or to which an indication of the country or place in which such variety was made or produced or the name and address of the breeder of such variety registered under this Act has been falsely made, shall unless he proves—

(a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of commission of the alleged offence no reason to suspect the genuineness of the denomination of such variety or that any offence had been committed in respect of indication of the country or place in which such variety registered under this Act, was made or produced or the name and address of the breeder of such variety,

(b) that, on demand by or on behalf of the prosecutor, he gave all the information in his power with respect to the person from whom he obtained such variety; or

(c) that otherwise he had acted innocently,

be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

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Penalty for falsely representing a variety as registered.

65. Whoever makes any representation with respect to the denomination of a variety or its propagating material or essentially derived variety or its propagating material not being variety or its propagating material or essentially derived variety or its propagating material registered under this Act to the effect that it is a variety or its propagating material or essentially derived variety or its propagating material registered under this Act or otherwise represents any variety, or its propagating material or essentially derived variety or its propagating material not registered under this Act to the effect that it is registered under this Act shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

Penalty for subsequent offence.

66. Whoever, having already been convicted of an offence under this Act is again convicted of such offence shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty lakh rupees.

No offence in certain cases.

67. The provisions of this Act relating to offences shall be subject to the right created as recognised by this Act and no act or omission shall be deemed to be an offence under the provisions of this Act if such act or omission is permissible under this Act.

Exemption of certain persons employed in ordinary course of business.

68. Where a person accused of an offence under this Act proves that in the ordinary course of his employment, he has acted without any intention to commit the offence and having taken all reasonable precautions against committing the offence charged, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the act so charged as an offence and on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the offence was committed, he shall be acquitted.

69. (1) Where the offence charged under this Act is in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under this Act and the accused pleads that the registration of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, is invalid and the court is satisfied that such offence is *prima facie* not tenable, it shall not proceed with the charge but shall adjourn the proceedings for three months from the date on which the plea of the accused is recorded to enable the accused to file an application before the Registrar under this Act for the rectification of the register on the ground that the registration is invalid.

Procedure where invalidity of registration is pleaded by the accused.

(2) If the accused proves to the court that he has made such application within the time so limited or within such further time as the court for sufficient cause allow, the further proceedings in the prosecution shall stand stayed till the disposal of such application for rectification.

(3) If within a period of three months or within such extended time as may be allowed by the court, the accused fails to apply to the Registrar for rectification of the register, the court shall proceed with the case as if the registration were invalid.

(4) Where before institution of a complaint of an offence referred to in sub-section (1), any application for the rectification of the register concerning the registration of the variety or its propagating material for essentially derived variety or its propagating material, as the case may be, in question on the ground of invalidity of such registration has already been properly made to and is pending before the Registrar, the court shall stay the further proceedings in the prosecution pending the disposal of the application aforesaid and shall determine the charge against the accused in conformity with the result of the application for rectification.

70. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

CHAPTER XVI

MISCELLANEOUS

71. Notwithstanding anything contained in this Act, the Authority or the Registrar shall—

(a) not disclose any information relating to the registration of a variety or any application relating to the registration of a variety under this Act, which it considers prejudicial to the interest of the security of India; and

Offences by companies.

Protection of security of India.

(b) take any action regarding the cancellation of registration of such varieties registered under this Act which the Central Government may by notification in the Official Gazette specify in the interest of the security of India.

Explanation.--For the purpose of this section, the expression "security of India" means any action necessary for the security of India which relates to the use of any produce of any variety registered under this Act directly or indirectly for the purposes of war or military establishment or for the purposes of war or other emergency in international relations.

Implied warranty on sale of registered variety, etc.

72. Where a denomination of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act has been applied to the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on sale or in the contract for sale of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, the seller shall be deemed to warrant that the denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of the sale of the variety or its propagating material or essentially derived variety or its propagating material, as the case may be, on contract to and accepted by the buyer.

Death of party to a proceeding.

73. If a person who is a party to a proceeding under this Act (not being a proceeding in a court) dies pending the proceeding, the Authority or the Registrar, having jurisdiction, as the case may be, may, on request, and on proof to the satisfaction of such Authority or Registrar, of the transmission of the interest of the deceased person, substitute in the proceedings his successor in interest in his place, or, if the Authority or the Registrar is of opinion that the interest of the deceased person is sufficiently represented by the surviving party, permit the proceedings to continue without the substitution of his successor in interest.

Right of registered agent and the registered licensee to institute suit.

74. The registered agent or the registered licensee of a variety or its propagating material or essentially derived variety or its propagating material registered under this Act may institute appropriate proceedings in the court under this Act on behalf of the breeder of such variety or its propagating material or essentially derived variety or its propagating material, as the case may be, if such agent or licensee has been authorised in the prescribed manner by such breeder for doing so.

Evidence of entry in register, etc., and things done by the Authority and the Registrar.

75. (1) A copy of any entry in the register, or of any document issued under this Act purporting to be certified by the Authority or the Registrar and sealed with the seal of such Registrar or the Authority, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original.

(2) A certificate purporting to be under the hand of the Authority or the Registrar, as the case may be, as to any entry, matter or things that such Authority or the Registrar is authorised by this Act or the rules to make or do shall be *prima facie* evidence of the entry having been made, and of the content thereof, or of the matter or things having been done or not done.

Authority and registrar and other officers not compellable to production of register, etc.

76. The Authority or the Registrar or any officer working under the Authority or the Registrar, as the case may be, shall not, in any legal proceedings be compelled to produce the register or any other document in its or his custody, the content of which can be proved by the production of a certified copy issued under this Act in the prescribed manner or to appear as a witness to prove the matters therein recorded unless by order of the court, as the case may be, made for special case.

77. Any person, may, on an application to the Authority or the Registrar, as the case may be, and on payment of such fee as may be prescribed, obtain a certified copy of any entry in the register or any other document in any proceedings under this Act pending before such Authority or Registrar or may inspect such entry or document.

Document open to public inspection.

78. The Central Government shall cause to be placed before both Houses of Parliament once a year a report regarding the performance of the Authority under this Act.

Report of the Authority and the registrar to be placed before Parliament.

79. The provisions of this Act shall be binding on the Government.

Government to be bound.

80. All proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety, registration of agent, registration of licence or registration of compulsory licensing under this Act shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Proceedings before Authority.

81. No suit, prosecution or other legal proceedings shall lie against the Central Government, or against the Chairperson, or members, or the Registrar or any person acting under such Government, Authority or Registrar under the provisions of this Act, for anything which is done in good faith or intended to be done in pursuance of this Act or any rule, regulation, scheme or order made thereunder.

Protection of action taken in good faith.

82. No civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar is empowered by or under this Act to determine.

Bar of jurisdiction.

83. The Chairperson, members and the officers and other employees of such Authority and the Registrar-General and the officers and other employees working under him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Member and staff of Authority, etc. to be public servants.

84. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-Tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Authority shall not be liable to pay wealth tax, income tax or any other tax in respect of their wealth, income, profits or gains derived.

Exemption from tax on wealth and income.

85. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Act to have overriding effect.

86. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to remove difficulties.

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Power to make regulations.

37. (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) duties and jurisdiction of Registrars under sub-section (4) of section 11;

(b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 11;

(c) the manner in which a single and distinct denomination to a variety shall be assigned by the applicant under sub-section (1) of section 16;

(d) matters governing the assignment of denomination of variety under sub-section (2) of section 16;

(e) the time within which the Registrar may require the applicant to propose another denomination under sub-section (3) of section 16;

(f) the standards for evaluating seeds during tests under sub-section (1) of section 18;

(g) to specify the quantity of seeds or other propagating material including parental line seeds to be deposited by a breeder under section 27;

(h) the limitations and conditions subject to which a breeder may authorise a person to sell, market or otherwise deal with varieties under sub-section (2) of section 28;

(i) the form for authorisation under sub-section (3) of section 28;

88. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power of the Central Government to make rules.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(i) the term of office of the Chairperson and the manner of filling the post under sub-section (6) of section 3;

(ii) the salary and allowances of the Chairperson and his conditions of service in respect of leave, pension, provident fund and other matters under sub-section (7) of section 3;

(iii) the time and place of meetings of the Authority and the rules of procedure in regard to the transaction of business at its meetings (including the quorum at its meetings) under sub-section (1) of section 4;

(iv) the control and restriction regarding appointment of the officers and employees of the Authority and the method of such appointment, scale of pay and allowances and other conditions of service under section 6;

(v) the powers and duties of the Chairperson under section 7;

(vi) the terms and conditions subject to which and the manner in which the measures referred to in sub-section (1) of section 8 may provide for the

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registration of extant or new varieties to the researchers and breeders under clause (a) of sub-section (2) of that section;

(vii) the manner for arranging production and sale of seeds under clause (d) of sub-section (2) of section 8;

(viii) the salary and allowances of Registrar-General of Plant Varieties and the conditions of service in respect of his leave, pension, provident fund and other matter under sub-section (3) of section 11;

(ix) the matters to be included in the National Register of Plant Varieties under sub-section (1) of section 12;

(x) the manner of authorising a person under clause (d) of sub-section (1) of section 15;

(xi) the form of application under clause (d), the fee under clause (g) and the other particulars under clause (b) which shall accompany such application under sub-section (1) of section 17;

(xii) the period within which after making application a proof of the right to make the application is to be forwarded under sub-section (3) of section 17;

(xiii) the fee to be deposited by the applicant under sub-section (2) of section 18;

(xiv) the manner and method of conducting the tests referred to in sub-section (1), under sub-section (3) of section 18;

(xv) the manner of advertising specifications of variety for registration including its photograph or drawing under sub-section (1) of section 20;

(xvi) the manner of making application and the fee payable for allowing further period to give notice and the manner of giving notice under sub-section (2) of section 20;

(xvii) the manner of sending counter statement under sub-section (4) of section 20;

(xviii) the manner of submitting evidence and the time within which such evidence may be submitted under sub-section (6) of section 20;

(xix) the documents and the fee which shall accompany the application under sub-section (2) of section 22;

(xx) the tests to be conducted and the procedure to be followed under sub-section (4) of section 22;

(xxi) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (9) of section 22;

(xxii) the form of a certificate of registration and the other authority to which a copy thereto shall be sent under sub-section (2) of section 24;

(xxiii) the manner of giving notice to the applicant under sub-section (3) of section 24;

(xxiv) the contents of the certificate and the manner of publishing such contents and inviting claim of benefits sharing under sub-section (1) of section 26;

(xxv) the form for submitting claims of benefit sharing and the fee to be accompanied therewith under sub-section (2) of section 26;

(xxvi) the manner in which and the time within which opposition to claims shall be submitted under sub-section (3) of section 26;

(xxvii) the fee payable for renewal or further renewal of period of validity of certificate of registration under sub-section (6) of section 26;

(xxviii) the manner of making difference under sub-section (7) of section 26;

(xxix) the manner of making an application for registration for title and the fee to be accompanied therewith under sub-section (4) of section 28;

(xxx) the manner of referring the disputes regarding registration of entitlement to the Authority under the proviso to sub-section (4) of section 28;

(xxxi) the manner to enter into a certificate the brief conditions of entitlement under sub-section (5) of section 28;

(xxxii) the manner of making an application for varying the terms of registration under clause (a), of sub-section (9) of section 28;

(xxxiii) the manner of making an application by the registered breeder and certain other for cancellation of the terms of registration under clause (b) of sub-section (9) of section 28;

(xxxiv) the manner of application by any person other than the breeder, his succession, the registered agent or the registered licences for cancellation of terms of registration under clause (c) of sub-section (9) of section 28;

(xxxv) the manner of application for cancellation of the terms of registration under clause (d) of sub-section (9) of section 28;

(xxxvi) the manner of application for cancellation of the terms of registration under clause (e) of sub-section (9) of section 28;

(xxxvii) the manner to issuing notice to the Registered breeder, etc. under sub-section (10) of section 28;

(xxxviii) the manner of giving notice to the Registrar under sub-section (1) of section 35;

(xxxix) the manner of notifying to the registered agent or registered licensee under sub-section (2) of section 35;

(xl) the period within which the registered agent and registered licensees shall give notice to the Registrar under sub-section (3) of section 35;

(xli) the manner of making applications under section 36;

(xlii) the manner of depositing fee payable under sub-section (2) of section 37;

(xliii) the manner of making applications under sub-section (1) of section 38;

(xlv) the manner of applying to the Registrar under sub-section (2) of section 38;

(xlii) the manner of giving notice under sub-section (4) of section 38;

- (xvii) the manner of application under sub-section (1) of section 39;
- (xviii) the manner of making application under sub-section (2) of section 39;
- (xix) the manner to apply to the Registrar under sub-section (1) of section 40;
- (xx) the manner of advertising applications and notice to the Registrar, and the time from the date of the advertisement within which a person may give such notice under sub-section (2) of section 40;
- (li) the manner of advertising the denomination of the variety under sub-section (3) of section 40;
- (lii) the particulars to be contained in the application under sub-section (2) of section 41;
- (lii) the authority who shall be making available compulsory licence and the manner of making available reproductive material of the for revocation of compulsory license variety under section 44;
- (liii) the form for making application under sub-section (1) of section 46;
- (liv) the manner of issuing notice and filing objections under sub-section (3) of section 48;
- (lv) the period of limitation for filing of appeal to High Court under sub-section (1) of section 50;
- (lvi) the manner of receiving benefit sharing under clause (a) of sub-section (1) of section 52;
- (lvii) the form for preparing annual statement of accounts under sub-section (1) of section 55;
- (lviii) the financial and administrative powers which the Chairperson shall exercise under section 56;
- (lix) the manner of using the denomination of a variety under sub-section (1) of section 61;
- (lx) the manner of authorising registered agent or registered licensee under section 74;
- (lxi) the manner of issuing certified copy of Register, etc., under section 76;
- (lxii) the fee payable for obtaining a certified copy of any entry in the Register, etc., under section 77;
- (lxiii) any other matter which is to be, or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision, is, in the opinion of the Central Government, necessary for the proper implementation of this Act.

89. Every rule and every regulation and every scheme made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or scheme or both Houses agree that the rule or regulation or scheme should not be made, the rule or regulation or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or scheme.

Rules,
regulations and
schemes to be
laid before
Parliament.

STATEMENT OF OBJECTS AND REASONS

The concept of Plant Breeders' Rights arises from the need to provide incentives to plant breeders engaged in the creative work of research which sustains agricultural progress through returns on investments made in research and to persuade the researcher to share the benefits of his creativity with society.

2. The issue of enacting a law relating to Plant Varieties Protection and Farmers' Rights in India has become important particularly on India's signing of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) 1994, India ratified the WTO Agreement on the 30th December, 1994 and the agreement came into force with effect from the 1st January, 1995. The TRIPs Agreement seeks to promote effective protection of Intellectual Property Rights in all fields of technology. The members are free to determine the appropriate method of implementing the provisions of the agreement with their own legal system and practice. Article 27 of TRIPs Agreement defines patentable subject matter and requires, *inter-alia*, under Article 27.3(b) that members shall provide for the protection of plant varieties whether by patenting or by an effective *sui generis* system or by any combination thereof. As a developing country member, India has a period of 5 years from 1st January, 1995 within which to comply with the provisions of Article 27.3(b) of TRIPs.

3. After careful consideration, the Ministry of Agriculture have taken a view that protection of plant varieties through a *sui generis* legislation would be the most appropriate way to comply with the provisions of the TRIPs Agreement.

4. Some of the advantages envisioned under the plant varieties protection system in India are detailed below:—

(i) by assuring a reasonable rate of return on a new plant variety when it finally reaches the market place, a system of plant breeders' rights encourages better and mission oriented research for development of varieties that are fully suited to a given agro-climatic regions;

(ii) India has developed commendable strength in agricultural research. Indian breeders working mainly in the public research system have developed a large number of new varieties. In the absence of plant breeders' rights, these varieties would be freely available to others for exploitation. New varieties developed on the basis of these varieties could get protected in other countries without any benefit accruing to Indian institutions/organisation, whereas, the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India. Therefore, putting a system of plant breeders' rights in action through law in India would provide protection to the public research system varieties developed by them. In future researchers' access to foreign germplasm may get linked to the provision of plant breeders' rights;

(iii) in the absence of plant breeders' rights, foreign companies would be hesitant to organise buy-back production of seeds in India for export to their countries for fear of unauthorised use of their genetic material;

(iv) a system of plant breeders' rights is also a useful adjunct to a legislative framework which is being formulated by the Ministry of Environment and Forests in accordance with the provisions of the Convention on Biological Diversity.

5. Keeping in view the above position, the Protection of Plant Varieties and Farmers' Rights Bill, 1999 proposes to achieve the following objectives:—

(i) to stimulate investments for research and development both in the public and the private sectors for the development of new plant varieties by ensuring appropriate returns on such investments;

(ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers; and

(iii) to recognise the role of farmers as cultivators and conservors and the contribution of traditional, rural and tribal communities to the country's agrobiodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional rights of the farmers.

6. While providing for an effective system of protection of plant breeders' rights, the proposed legislation seeks to safeguard farmers' and researchers' rights. It also contains provisions for safeguarding the larger public interest.

The farmer's rights include his traditional rights to save, use, share or sell his farm produce of a variety protected under this Act provided the sale is not for the purpose of reproduction under a commercial marketing arrangement.

7. The proposed legislation contains provisions to facilitate equitable sharing of benefits arising out of the use of plant genetic resources that may accrue to a breeder from the sale, disposal, etc. of seeds/planting material of a protected variety. The village and farming community will be compensated in case of their traditional or local varieties is used for the development of new varieties.

8. A National Gene Fund will be established to promote the conservation and sustainable use of genetic resources of agrobiodiversity.

9. The proposed legislation will extend to all categories of plants, but will not include micro-organisms. In order to be eligible for protection, a variety must be distinct, uniform and stable. The period of protection shall be eighteen years for trees and vines and fifteen years for other plants. Breeder's rights envisage that the breeder's authorisation will be required for production and commercial sale of the productive or propagating material of a protected variety.

10. The Protection of Plant Varieties and Farmers' Rights Authority will be established with the necessary powers to perform all functions relating to the protection of plant varieties. The duties and functions of the Authority, *inter alia*, shall include:—

(i) to promote and develop new varieties of plants and to protect rights of the farmers and breeders;

(ii) to register extant and new plant varieties;

(iii) to develop characterisation and documentation of varieties;

(iv) to provide the compulsory licensing of protected varieties if the right holder does not arrange for production and sale of the seeds to ensure that protected seeds are available to the farmers;

(v) to collect statistics with regard to plant varieties, seeds and germplasm for compilation and publication.

11. The notes on clauses explain in detail the various provisions contained in the Bill.

12. The Bill seeks to achieve the aforesaid purpose.

NEW DELHI;
The 3rd December, 1999.

NITISH KUMAR.

Notes on clauses

Clause 1.—This clause gives the short title of the Bill, the area of its operation and the date of commencement of the Act and its various provisions. As adequate steps have to be taken for administering the provisions of the proposed legislation, provision has been made to bring different provisions of the Act on different dates.

Clause 2.—This clause contains definitions of various expressions used in the Bill. The definitions of "Authority", "benefit sharing", "breeder", "convention country", "breeder", "denomination", "essential characteristics", "extant variety", "farmer", "Gene Fund", "germplasm", "plant", "seed" and "variety" are some of them. Any person who cultivates crops either by cultivation of the land himself or through any other person is defined as a farmer. A person who conserves and preserves severally or jointly with any other person any wild species or traditional variety of plants or add value to such wild species or traditional varieties through selection and identification of their useful properties shall also come within the definition of farmer. Plant in relation to a cultivated plant and its wild relative is defined as an organism or part thereof which belongs to the kingdom of plant which is not included in the animal kingdom. It also does not include micro-organism.

Clause 3.—This clause provides for the establishment of an Authority to be called the Protection of Plant Varieties and Farmers' Rights Authority. The Authority shall consist of a Chairperson and nine *ex officio* members including the Member-Secretary. The Chairperson shall be a person of outstanding calibre and eminence in the field of plant varietal research or in the related field of agricultural research and having not less than twenty-five years of practical experience in either field. The Registrar-General of Plant Varieties shall be the Member-Secretary of the Authority. The *ex officio* members include the Agriculture Commissioner, Horticulture Commissioner, Director of the National Bureau of Plant Genetic Resources, representatives of Ministries dealing with seeds, bio-technology environment and forests and law and Indian Council of Agricultural Research.

Clause 4.—This clause lays down detailed procedure for convening the meetings of the Authority.

Clause 5.—This clause seeks to provide for the appointment of various committees by the Authority for efficient discharge of its duties.

Clause 6.—This clause seeks to provide for the appointment of various officers and employees by the Authority for its efficient performance of its functions. It also enables the Central Government to lay down rules governing the method of appointment, salary and other terms and conditions of the officers and employees.

Clause 7.—This clause specifies that the Chairperson of the Authority shall be the Chief Executive of the Authority. His detailed powers and functions will be laid down in the rules.

Clause 8.—This clause lays down the detailed general functions of the Authority which includes promotion and development of new varieties of plants, protection of rights of the farmers and breeders with respect to these varieties of plants and various measures to be taken for developing characterisation and documentation of varieties.

Clause 9.—This clause provides that all orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any member authorised by the Authority.

Clause 10.—This clause enables the Authority to delegate its powers (except the power to make regulations under section 88), by order in writing to the Chairperson or any member or officer of the Authority subject to such conditions or limitations.

Clause 11.—This clause contains provisions for the establishment of a Registry called the Plant Varieties Registry at the Head Office of the Authority and branch offices at such other places as the Authority may think fit to register the plant varieties. The Authority shall appoint the Registrar General and such number of Registrars as may be necessary for registration of plant varieties.

Clause 12.—This clause seeks to maintain a register called the National Register of Plant Varieties at the Head Office of the Registry. The details of the breeder and salient features of the variety would be entered in the Register. The copies of this register can also be kept at the branch offices of the Registry as per the directions of the Authority.

Clause 13.—This clause provides for the filing of applications for registration of any plant variety.

Clause 14.—This clause lays down the criteria for registration of new varieties. The new variety shall be eligible for registration only if it conforms to the criteria of novelty, distinctiveness, uniformity and stability. An extant variety can be registered even if it does not conform to the criteria of novelty. If a variety contains any gene or gene sequences involving any harmful technology including terminator technology which is injurious to the life or health of human beings, animals or plants, can not be registered.

Clause 15.—This clause specifies the persons who can make applications for registration of a variety. The application can be made by any person either individually or jointly with any other person for registration of the variety.

Clause 16.—This clause seeks to provide for compulsory assigning of a single and distinct denomination to a variety for seeking registration by the applicant. The Authority shall make detailed regulations governing such assignment of denomination of plant varieties. Sub-clause (4) seeks to provide that every applicant shall cause the variety to be catalogued. The cataloguing will be done by such institutions or centre as may be notified by the Central Government.

Clause 17.—This clause lays down the detailed procedure for registration of plant varieties. The form of application, the documents and fee which may accompany an application and the manner in which such applications shall be made will be specified by the Central Government by rules.

Clause 18.—This clause stipulates that at the time of application the breeder will provide prescribed quantity of seeds to the Registrar for the purpose of conducting various tests to establish its eligibility for registration. The applicant is required to deposit necessary fee for this purpose.

Clause 19.—This clause provides for the acceptance of the application of the breeder by the Registrar either absolutely or subject to such conditions or limitations as he may deem fit after examining the application. If the Registrar rejects an application he is required to give a reasonable opportunity to the applicant for presenting his case.

Clause 20.—This clause provides that where an application has been accepted, the Registrar shall cause the same to be advertised in such manner as may be prescribed by the Central Government by rules inviting objections from all persons interested in the matter. Any person may within three months from the date of advertisement of the applications or within such further period, not exceeding thirty days in the aggregate, as the Registrar may, an application made to him alongwith the required fees, allows, give notice of his opposition to the registration. Sub-clause (3) lays down the grounds on which an opposition to the registration could be made.

An opposition could be made on the ground that the person opposing the application is entitled to the breeder's right as against the applicant for registration. The other grounds available for opposition of the application are

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that the variety is not registrable under the proposed legislation or that the grant of Certificate of Registration may not be in the public interest. This clause also provides for hearing of the parties by the Registrar in relation to the opposition and grant of permission by him for correction or amendment to the notice of opposition or counter statement.

Clause 21.—This clause stipulates that the Registrar shall consider all the grounds of opposition for registration of a variety and give a reasoned decision.

Clause 22.—This clause seeks to specify the procedure for registration of essentially derived variety. The breeder of an essentially derived variety could exercise his rights for Plant Breeder's Rights if the authorization is given by the breeder of the initial variety subject to such terms and conditions as both the parties may mutually agree upon.

Clause 23.—This clause states that the Authority and Registrar will have all the powers of a civil court for the purposes of receiving evidence, administering oaths, etc.

Clause 24.—This clause deals with the issue of certificate of registration to the applicant with the seal of the Plant Varieties Registry which shall be valid for three years and may be renewed further so that total period of protection which will not be more than eighteen years in the case of trees and vines and in other cases fifteen years from the date of registration of variety. In the case of extant variety, the total period of protection is fifteen years from the date of the notification of that variety by the Central Government under the Seeds Act, 1966 or fifteen years from the date of registration as farmer's variety.

Clause 25.—This clause provides for periodic publication of list of varieties which have been registered by the Authority.

Clause 26.—This clause lays down the detailed procedure for determination of benefit sharing by the Authority. The amount of benefit sharing determined by the Authority is required to be deposited by the breeder of the Plant Variety in the National Gene Fund constituted under section 52. Sub-clause (7) of this clause provides that the amount of benefit sharing determined by the Authority shall, on a reference made by the Authority in the manner as may be provided by rules, be recoverable by the District Magistrate from the breeder liable for the benefit sharing as arrears of land revenue.

Clause 27.—This clause stipulates that every breeder will have to deposit such quantity of seeds or propagating materials including parental line seeds as may be specified in the regulations.

Clause 28.—This clause enable a breeder to authorise any person to produce sell, market or otherwise to deal with the registered variety subject to such limitations and conditions as may be laid down in the regulations. Sub-clause (5) enables the Registrar to issue a certificate of Registration to the agent or licensee duly authorised. This clause also seeks to confer an exclusive right on the breeder or his licensee to produce, sell market, distribute, import or export the variety. The Registrar will also have power to cancel the registration if the licensee fails to comply with certain provision of the proposed legislation.

Clause 29.—This clause provides that registration of a variety will not be allowed in cases where prevention of commercial exploitation of such variety is necessary to protect public order or public morality or human, animal or plant life and health or to avoid serious prejudice to the environment. The Central Government can exclude any genes or species from the purview of protection in public interest.

Clause 30.—This clause provides for researchers' rights for use of any protected variety for research or experimental purpose. The use of any variety registered under the proposed legislation by any person for conducting experiments and research is and for use as an initial source of variety for the purpose of creating other varieties shall not be prevented by the operation of the proposed legislation. However, the authorisation of a breeder of a registered variety is required where the repeated use of such variety as a parental line is necessary for commercial production of such other newly developed variety.

Clause 31.—This clause provides that nothing contained in the proposed legislation shall affect the right of a farmer to save, use, exchange, share or sell his farm produce of a variety protected under the legislation. However, a farmer shall not be entitled for such right in case where the sale is for the purpose of reproduction under a commercial marketing arrangement.

Clause 32.—This clause makes a special provisions relating to application for registration of varieties from citizens of convention countries. This clause also empowers the Central Government to declare any country which affords to citizens of India similar privileges as are granted its own citizens and in order to fulfil a treaty, convention or arrangement with that country as a convention country for the purposes of the proposed legislation.

Clause 33.—This clause confers rights of reciprocity to the citizens of convention countries for protection of plant varieties. In case a country does not provide similar treatments to citizens of India, no nation of such country shall be entitled, either solely or jointly with any other person to apply for registration of a variety or is entitled to get a variety registered under the proposed legislation.

Clause 34.—This clause provides that except as otherwise provided in the proposed legislation, no person shall produce or cause to be produced or sell or offer to sell or cause to be sold or cause to be offered to be sold or market or cause to be marketed or export or cause to be exported or import or cause to be imported any variety registered under this Act unless he has obtained authorisation as an agent or licensee from the registered breeder of such variety and has been registered as such under this Act.

Clause 35.—This clause provides for surrender of certificate of registration by the breeder.

Clause 36.—provides for revocation of protection on certain grounds.

Clause 37.—refers to the provision for imposition by the Central Government of an annual fee to be paid by every breeder of a variety for retention of their registration.

Clause 38.—This clause provides that Registrar of the Authority may pass an order for cancellation or changing any certificate or registration of plant varieties on certain grounds.

Clause 39.—This clause provides that Registrar on an application by the breeder of a variety may correct any error in the register or change the name, address or description of such breeder.

Clause 40.—This clause seeks that the breeder of a registered variety may apply to the Registrar for alteration of denomination of a registered variety.

Clause 41.—This clause states that after the expiry of three years from the date of issue of a certificate of registration of a variety, any person interested may make an application to the Authority alleging that the reasonable requirements of the public for seeds have not been satisfied or not available at the reasonable price and pray for the grant of a compulsory licence to undertake production, distribution and sale of the seeds or other propagating material of that variety. The Authority after giving an opportunity to the breeder of such variety, may order such breeder to grant a licence to the applicant upon such terms and conditions as may be deemed fit.

Clause 42.—This clause deals with situations when requirement of public for seeds of a variety have not been satisfied.

Clause 43.—This clause deals with the adjournment of hearing of the application for grant of compulsory licence certain grounds.

Clause 44.—This clause stipulates that the Authority shall determine the duration of the compulsory licence keeping in view the gestation period and other relevant factors.

Clause 45.—This clause stipulates that the Authority shall determine the terms and conditions of compulsory licence.

Clause 46.—This clause provides for revocation of compulsory licence by the Authority on its own motion or on an application from an aggrieved person that the compulsory licensee has violated the terms and conditions of the licence.

Clause 47.—This clause seeks to provide that the Authority may modify the terms and conditions of the compulsory licence.

Clause 48.—This clause provides for rights of the village or farming community for getting compensation for their contribution in the evolution of new variety.

Clause 49.—This clause provides for framing of schemes for apportionment of amounts under benefit sharing arrangements and compensation to village communities.

Clause 50.—This clause provides for an appeal to the High Court against any decision or order of the Authority.

Clause 51.—This clause empowers High Court to make rules consistent with the provisions of the proposed legislation for the conduct of all proceedings under this Act.

Clause 52.—provides for constitution of a National Gene Fund from contribution of benefit sharing, annual fees payable by way of royalty, compensation to the village community and contribution from national and international organisations and other sources. The funds shall be utilised for the payment of benefit sharing to the claimant, compensation to the village community for exploitation of their variety, for conservation and sustainable use of genetic resources, etc.

Clause 53.—This clause enables the Central Government to provide grants and loans to the Authority for the implementation of the various provisions of the proposed legislation. This may be done after due appropriation as may be made by Parliament.

Clause 54.—This clause enables the Central Government to constitute a fund to be called the Protection of Plant Varieties Authority Account. All the grants and loans made to the Authority by the Central Government under clause 53, all fees received by the Authority and Registrar, except the annual fee received by way of royalty and all sums received by the Authority from the other sources as may be decided upon by the Central Government shall form the corpus of the aforesaid account. The moneys in the account could be applied for meeting the various expenses which may be incurred by the Authority in the due discharge its functions and for the purposes of the proposed legislations including payment of salaries, etc., to the Chairperson, officers and other employees of the Authority and allowances, if any, payable to the members.

Clause 55.—This clause provides that Authority shall prepare the budget, maintain proper accounts and other relevant record and prepare an annual statement of accounts in consultation with the Comptroller and Auditor General of India. Accounts of the Authority shall be audited by the Comptroller and Auditor General of India. The accounts of the Authority shall be laid down before each House of the Parliament.

Clause 56.—This clause provides that the Chairperson should exercise such financial and administrative powers as may be prescribed by rules made under the proposed legislation.

Clause 57.—This clause seeks that any person who is not the original breeder of a variety or a licensee of that variety if sells, exports, imports or produce such variety, will cause an infringement of the right of the breeder.

Clause 58.—This clause seeks to provide that no suit for the infringement of a variety registered under the proposed legislation shall be instituted in any court inferior to a District Court.

Clause 59.—This clause seeks to provide for reliefs in suit for infringement.

Clause 60.—This clause seeks to provide that the court may seek independent opinion of scientific adviser on a question of fact or a scientific issue in forming an opinion.

Clause 61.—This clause seeks to prohibit use of denomination of a registered variety by a person other than the breeder of the registered variety.

Clause 62.—This clause provides that anybody who uses the denomination of a registered variety without the assent of the breeder will be treated as falsely applying the denomination of a variety.

Clause 63.—This clause provides for the penalty for applying false denomination to a variety registered under the proposed legislation will be imprisonment for a term which shall not be less than three months but which may extend to two years and with fine which shall not be less than five thousand rupees but which may extend to ten lakh rupees.

Clause 64.—This clause lays down the penalty for selling variety with false denomination. The penalty will be imprisonment for a term not less than six months and upto two years and with fine which shall not be less than fifty thousand rupees but which may extend to ten lakh rupees.

Clause 65.—This clause seeks to lay down the penalty for falsely representing a variety as registered with an imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

Clause 66.—This clause lays down the penalty for subsequent offences (having convicted earlier under the proposed legislation) with imprisonment for a term which shall not less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty lakh rupees.

Clause 67.—This clause seeks to provide that the provisions of the proposed legislation relating to the offences shall be subject to the rights recognised by it.

Clause 68.—This clause provides for exemption of certain persons employed in the ordinary course of business who are accused of any offence under the proposed legislation from any liability if they had acted without any intention to commit the alleged offence and had taken all reasonable precautions against the commission of the offence charged and had no reason to suspect the genuineness of the act so charged and on demand made by or on behalf of the prosecutor had given all information in their power with respect to the matter and then they shall be acquitted.

Clause 69.—This clause lays down the procedure where the invalidity of registration is pleaded by an accused. This clause relates to offences in relation to a variety or its propagating material or essentially derived variety or its propagating material registered under the proposed legislation. This provision also enables the accused to get the registration suitably rectified within the time permissible under the proposed legislation failing which the registration shall be deemed to have been invalid and the court shall proceed with the case accordingly.

Clause 70.—This clause contains provisions for offences by companies. This clause seeks to provide that where a person committing offence is a company, every person responsible in the company for the conduct of its business will be liable. Where a person accused proves that the offence was committed without his knowledge he will not be liable. However, where it is proved that an offence has been committed with the consent or connivance or is attributable to the neglect of any director, manager, secretary or any other officer of the company, he shall be deemed to be guilty of the offence.

Clause 71.—This clause empowers the Central Government to specify actions required to be taken by the Authority or Registrars including cancellation of registration of varieties in the interest of security of India. The *Explanation* to this clause defines the expression "security of India."

Clause 72.—This clause seeks to provide that the sellers shall be deemed to warrant that a denomination is a genuine denomination and not falsely applied, unless the contrary is expressed in writing signed by or on behalf of the seller and delivered at the time of sale if the denomination of a variety or its propagating material or essentially derived variety or its propagating material is registered under the proposed legislation.

Clause 73.—This clause provides that in case of death of a party to a proceeding under the proposed legislation (not being a proceeding in a court) during the course of the proceedings, the Authority or the Registrar, as the case may be, on proof to its or his satisfaction may allow substitution of the successor of such party or may allow the proceeding to continue with the surviving parties.

Clause 74.—This clause refers to the rights of registered agents and the registered licensees to institute appropriate proceedings in court on behalf of the breeder of any variety or its propagating material or essentially derived variety or its propagating material, as the case may be, in case such agents or licensees have been authorised by the breeder, as per the rules, for doing so.

Clause 75.—This clause provides that a certified copy of any entry in the register or any document issued under the proposed legislation and sealed with the seal of the Registrar or the Authority, as the case may be, shall be admitted in evidence in all courts and in all proceedings without further proof or production of the original. Sub-clause (2) provides that a certificate issued by the Registrar as to any entry, matter or thing, he is authorised to do shall be *prima facie* evidence of the entry having been made and of the contents thereof.

Clause 76.—This clause states that the Authority or the Registrar or any officer working under the Authority, shall not be compelled to produce the register and other documents if the contents of such documents can be proved by production of their certified copies issued under the proposed legislation or to appear as a witness to prove the matters recorded therein unless otherwise ordered by the court for special reasons.

Clause 77.—This clause provides for the inspection of documents and taking of certified copies thereon in respect of documents in any proceedings pending before the Authority or the Registrar. Any member of the public may inspect the documents or any entry therein and also obtain a certified copy of such documents or any entry therein on payment of the prescribed fee and on making an application to the concerned Authority.

Clause 78.—This clause stipulates that the Central Government shall cause placing of a report regarding the performance of the Authority under the proposed legislation once a year before both the Houses of Parliament.

Clause 79.—This clause states that the provisions of the proposed legislation shall be binding on the Government.

Clause 80.—This clause provides that all proceedings before the Authority or the Registrar, as the case may be, relating to registration of variety or essentially derived variety or registration of agent or licence or registration of compulsory licensing under the proposed legislation shall be deemed to be judicial proceedings and the Authority or the Registrar, as the case may be, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 81.—This clause provides for protection of action taken in good faith by the Central Government, Chairperson, members of the Authority or the Registrar or any person acting under any of them from any suit, prosecution or other legal proceedings.

Clause 82.—This clause provides that no civil court shall have jurisdiction in respect of any matter which the Authority or the Registrar is empowered with or under the proposed legislation to determine.

Clause 83.—This clause states that the Chairperson, members of the Authority and officers and the other employees of the Authority and the Registrar General and the officers and the other employees working under him shall be deemed to be public servants.

Clause 84.—This clause seeks exemption of the Authority from any tax on wealth, income or profits and gains derived.

Clause 85.—This clause states that the provisions of the proposed legislation shall have overriding effect on all other laws for the time being in force or anything inconsistent with the proposed legislation contained in any instrument.

Clause 86.—This clause empowers the Central Government to remove any difficulties which may arise in giving effect to the provisions of the proposed legislation by order published in the Official Gazette. Such order shall not be inconsistent with the provisions of the proposed legislation. This power can be exercised only within two years from the commencement of the proposed legislation. Every such order shall be required to be laid before Parliament.

Clause 87.—This clause empowers the Authority to make regulations consistent with the provisions of the proposed legislation and the rules made thereunder. Such regulations are required to be made with previous approval of the Central Government and by notification in the Official Gazette. Sub-clause (2) of this clause enumerates the various matters in respect of which such regulations may be made.

Clause 88.—This clause empowers the Central Government to make rules to carry out the provisions of the proposed legislations. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matters, *inter alia*, include the term of office of the Chairperson, the manner of filling the posts of the Chairperson, the salary and allowances payable to the Chairperson, the manner of arranging production and sale of seeds, the fee payable for various acts under the proposed legislation and the preparation of annual statement of accounts of the Authority.

Clause 89.—This clause seeks to provide that every rule made and every scheme framed by the Central Government and every regulation made by the Authority shall be laid before Parliament.

FINANCIAL MEMORANDUM

Clause 3 proposes to set up an independent statutory Authority to be known as the "Protection of Plant Varieties and Farmers' Rights Authority". The recurring expenditure towards salary, allowances and other expenditure relating to the Chairperson, members and other officers and employees of the Authority appointed under clause 6 will be of the order of Rs. 126 lakhs per annum. The other recurring expenditure by way of rent, maintenance and training, etc., will be of the order of Rs. 83 lakhs per annum. Non-recurring expenditure by way of purchase of accommodation, furniture and fixtures, office equipments, vehicles, etc., will be approximately of the order of 168 lakh rupees.

2. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 49 of the Bill empowers the Central Government to frame, by notification in the Official Gazette, one or more schemes, for the purposes relating to the contribution of village or local communities in the evolution of plant varieties and the benefit sharing in relation to plant varieties. Sub-clause (2) of that clause enumerates the various matters in respect of which such scheme or schemes may be framed. These matters, *inter alia*, include the Registration of claims for the purposes of rights of communities, utilisation of benefit sharing for the purposes relating to breeding, discovery and development of varieties and procedure for disbursal of apportionment of claims by the Authority in the event of disputes.

2. Clause 87 of the Bill empowers the Central Government to make rules, by notification in the Official Gazette, to carry out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters with respect to which rules may be made under the proposed legislation. These matters, *inter alia*, relate to the terms of office, the salary and allowances and conditions of service of Chairperson of the Authority, the time and place of the meetings and transaction of business of the Authority, the appointment, pay and other conditions of service of the officers and employees of the Authority, registration of plant varieties, the salary, allowances and conditions of service of Registrar, maintenance of National Register of Plant Varieties, the various forms of application and the fees be accompanied with them and other particulars relating to them, the manner and method of conducting tests, the manner of submitting evidence, the form of certificates of registration and other matters relating thereto, the manner of issuing notices and filing oppositions, the manner of authorising registered agents and registered licensees and other matters of procedural nature.

3. Clause 88 of the Bill empowers the Plant Varieties and Farmers' Rights Protection Authority to make regulations, by notification in the Official Gazette and with the previous approval of the Central Government and consistent with the provisions of the proposed legislation and the rules, to carry out the provisions of the legislation. Sub-clause (2) of that clause enumerates the various matters with respect to which regulations may be made under the proposed legislation. These matters, *inter alia*, relate to the duties and jurisdiction and conditions of service of Registrar, assignment of denominations of varieties and other matters relating thereto, quantity of seeds and other propagating materials to be deposited by the breeders and other matters of procedural nature.

4. The rules, regulations and schemes made under the proposed legislation shall be required to be laid before, Parliament.

5. The aforesaid matters in respect of which rules, regulations or schemes may be made or framed relate to matters of procedure or administrative, details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

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to provide for the establishment of an Authority to give an effective system for protection of the rights of plant breeders and farmers, and to encourage the development of new varieties of plants, and to give effect to sub-paragraph (b) of paragraph 3 of article 27 in Part II of the Agreement on Trade Related Aspects of Intellectual Property Rights.

(Shri Nitish Kumar, Minister of Agriculture)

APPENDIX V

MINUTES OF THE Sittings OF THE JOINT COMMITTEE ON PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

I

FIRST SITTING

The Committee sat from 1100 to 1300 hrs. on 18 January, 2000 in Committee Room 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma—*Chairman*

MEMBERS

Lok Sabha

2. Dr. Baliram
3. Shri Ajay Chakraborty
4. Shri G. Putta Swamy Gowda
5. Shri Suresh Ramrao Jadhav
6. Shri Raghvendar Singh Kaushal
7. Dr. Ramkrishna Kusmaria
8. Shri Jagannath Mallick
9. Shri Anna Saheb M.K. Patil
10. Shri Sharad Pawar
11. Shri Nawal Kishore Rai
12. Shri Chandra Bhushan Singh
13. Shri Ram Prasad Singh
14. Shri Ummareddy Venkateswarlu
15. Shri Mahboob Zahedi
16. Shri Nitish Kumar

Rajya Sabha

17. Shri Janardhana Poojary
18. Shri V. Kishore Chandra S. Deo
19. Dr. Ranbir Singh
20. Shri Onkar Singh Lakhawat
21. Shri Yadlapati Venkat Rao
22. Shri Balwant Singh Ramoowalia
23. Dr. Biplob Dasgupta

SECRETARIAT

Shri P.D.T. Achary	— <i>Joint Secretary</i>
Shri Ram Autar Ram	— <i>Director</i>
Shri P.D. Malvalia	— <i>Under Secretary</i>

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION —
SEEDS DIVISION)

1. Shri Bhaskar Barua	— Secretary
2. Dr. R. S. Paroda	— Director General
3. Shri J.N.L. Srivastva	— Special Secretary
4. Shri R. C. A. Jain	— Additional Secretary
5. Dr. P. L. Gautam	— Director
6. Shri Govindan Nair	— Joint Secretary
7. Dr. Mangala Rai	— Deputy Director
8. Dr. A. K. Raheja	— ADG
9. Ms. Dolly Chakrabarty	— Deputy Secretary
10. Shri R. K. Trivedi	— Assistant Commissioner

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri T. K. Viswananthan	— Additional Secretary
2. Dr. S. D. Singh	— Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Joint Committee and drew their attention to the various provisions of the Bill and referred to the importance and urgency of the task before the Committee. (Appendix-I)

3. Thereafter, the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation) gave a brief presentation to the Committee on the Bill under reference and the need to bring the proposed legislation.

4. The Committee observed that the proposed Bill deals with a sensitive issue and requires a deep study.

5. The Committee considered their future course of action and decided that a Press Communiqué might be issued in all the national dailies in English and Hindi inviting memoranda from various State Governments, Agricultural Universities, Associations, Organisations, individuals etc., interested in the subjects matter of the Bill. The Committee also desired that the contents of the Press Communiqué be given wide publicity through All-India Radio and Doordarshan. The Chairman also requested the members to suggest the names of organisations, individuals etc. from whom memoranda might be invited.

6. The Chairman read the time schedule of the work of the Committee. The Committee felt that it will be difficult to complete the task of the Committee by the last day of the first week of the Budget Session of 2000. The Committee, therefore, opined that an extension of time might be sought from the House as the work will approximately be completed minimum in 4-5 months thereafter.

7. The Committee also desired that they might undertake an on-the-spot study visit to various parts of the country to elicit the views of various organisations, associations and general public.

8. The Committee requisitioned certain information, material, documents etc., from the officials of the Ministry of Agriculture (Department of Agriculture and Cooperation—Seeds Division) for their information and future use.

The Committee then adjourned.

APPENDIX

WELCOME SPEECH BY THE CHAIRMAN AT THE INAUGURAL SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999 TO BE HELD ON 18.1.2000

It gives me immense pleasure in welcoming the Hon'ble Members to this first sitting of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999.

2. As you know India has developed commendable strength in agricultural research. Indian breeders working mainly in the public research system have developed a large number of new varieties. In the absence of plant breeders' rights, these varieties would be freely available to others for exploitation. New varieties developed on the basis of these varieties could get protected in other countries without accruing any benefit to Indian institutions/organisations, whereas, the availability of varieties developed in countries which provide for plant breeders' rights would be restricted in India. Therefore, putting a system of plant breeders' rights in action through law in India would provide protection to the public research system varieties developed by them.

3. As you might have seen from the statement of objects and reasons appended to the Bill, the issue of enacting a law relating to Plant Varieties Protection and Farmers' Rights in India has become important particularly on India's signing of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) 1994. India ratified the WTO Agreement on the 30th December, 1994 and the agreement came into force with effect from the 1st January, 1995. The TRIPs Agreement seeks to promote effective protection of Intellectual Property Rights in all fields of technology.

4. The Protection of Plant Varieties and Farmer's Rights Bill, 1999 seeks to provide for the establishment of an Authority with necessary powers to give an effective system for protection of the rights of plants breeders and farmers, and to encourage the plant breeders by way of providing incentives etc., to develop new varieties of plants, and to give effect to certain articles of the Agreement on Trade Related Aspects of Intellectual Property Rights, and provide for matters connected therewith or incidental thereto.

5. The Protection of Plant Varieties and Farmers' Rights Bill, 1999 proposes to achieve certain objective i.e. (i) to stimulate investments for research and development both in the public and Private Sectors for the development of new plant varieties by ensuring appropriate returns on such investments; (ii) to facilitate the growth of the seed industry in the country through domestic and foreign investment which will ensure the availability of high quality seeds and planting material to Indian farmers; and (iii) to recognise the role of farmers as cultivators and conservors and the contribution of traditional, rural and tribal communities to the country's agrobiodiversity by rewarding them for their contribution through benefit sharing and protecting the traditional rights of the farmers.

6. As per the terms of the constitution of the Committee, the report of the Committee is to be presented to the House by the last day of the first week of the next Session. I would, therefore, request the Hon'ble Members to find time from their busy schedule to attend the sittings of the Committee and to make our collective effort more effective and purposive so as to enable the Committee to present their report to the House within the prescribed time.

7. I hope that with the cooperation of my esteemed colleagues in this Committee, we would be able to accomplish the task entrusted to us. I would welcome the valuable suggestions of the Hon'ble Members in this regard. If any member wants to make any suggestion at this stage he/she is welcome to do so.

Thank You.

II

MINUTES OF THE SECOND SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1100 to 1330 hrs. and again from 1500 to 1700 hrs. on 24 March, 2000 in Committee Room 'B', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Smt. Kailasho Devi
4. Shri G. Putta Swamy Gowda
5. Shri Suresh Ramrao Jadhav
6. Shri Raghuveer Singh Kaushal
7. Shri Jagannath Mallick
8. Dr. Ranjit Kumar Panja
9. Shri Sharad Pawar
10. Shri Ram Prasad Singh
11. Shri Mahboob Zahedi

Rajya Sabha

12. Shri Onkar Singh Lakhawat
13. Dr. Biplab Dasgupta
14. Shri Gurudas Das Gupta

SECRETARIAT

Shri Ram Autar Ram — *Director*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE

(DEPARTMENT OF AGRICULTURE & COOPERATION—SEEDS DIVISION)

1. Shri Bhaskar Barua	— Secretary
2. Dr. R.S. Paroda	— Director General
3. Shri J.N.L. Srivastva	— Special Secretary
4. Shri Govindan Nair	— Joint Secretary
5. Dr. P.L. Gautam	— Director
6. Dr. Mangala Rai	— Deputy Director
7. Dr. R.P. Katiyar	— ADG
8. Dr. J.P. Mishra	— ADG, IPR
9. Ms. Dolly Chakrabarty	— Deputy Secretary
10. Shri R.K. Trivedi	— Assistant Commissioner

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Dr. S.D. Singh — Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Members of the Joint Committee and apprised the Members of the Committee who did not join the Study Visits to Guwahati, Calcutta, Chennai, Mumbai, Bhopal, Ahmedabad, Jaipur and Ludhiana, in brief about the discussions held at those places with the representatives of various farmers' associations/organisations/individuals/experts etc. on the various provisions of the Bill.

3. Before the Committee proceeded to hear oral evidence of the following farmers' organisations/associations/individuals, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker under Rules of Procedure and Conduct of Business in Lok Sabha:—

- I. Prof. M.S. Swaminathan,
M.S. Swaminathan Research Foundation,
Chennai.
- II. Shri K. Rajan, IAS (Retd.),
Mumbai.
- III. Dr. S.C. Tiwari,
Varanasi
- IV. Monsanto Enterprises Ltd.,
Mumbai.
 - 1. Dr. P.D. Muzumdar, Advisor.
 - 2. Sh. Rajendra Kctkar, Director-Cotton.

A verbatim record of proceedings was kept.

The Committee then adjourned to meet again at 1500 hrs.

4. The Committee re-assembled and resumed the oral hearing. Before the Committee started the oral hearing of the following farmers' associations/organisations/individuals, the Chairman of the Committee drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker under Rules of Procedure and Conduct of Business in Lok Sabha:—

- I. Shri N.K. Shukla, Joint Secretary,
All India Kisan Sabha,
New Delhi.
- II. Shri Afsar H. Jafri,
Research Foundation for Technology and Ecology,
New Delhi.
- III. National Working Group on Patent Laws
New Delhi.
 - 1. Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development and Convenor, National Working Group on Patent Laws.
 - 2. Dr. Biswajit Dhar, Co-Convenor, National Working Group of Patent Laws.
- IV. Seed Association of India,
New Delhi-110 058.
 - 1. Shri R.S. Arora, Secretary General, SAI and Managing Director,
M/s Century Seeds Pvt. Ltd.
 - 2. Dr. J.S. Sandhu, Director, M/s Proagro Seeds Co. Ltd.
 - 3. Dr. A.S. Kataria, Director, SAI

A verbatim record of the proceedings was kept.

The Committee then adjourned.

III

MINUTES OF THE THIRD SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1500 to 1800 hrs. on 19 April, 2000 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS
Lok Sabha

2. Shri Ajay Chakraborty
3. Dr. Ramakrishna Kusmaria
4. Shri Nawal Kishore Rai
5. Shri Chandra Bhushan Singh
6. Shri Ummaredy Venkateswarlu
7. Shri Mahboob Zahedi

SECRETARIAT

1. Shri P.D.T. Achary — *Joint Secretary*
2. Shri Ram Autar Ram — *Director*
3. Shri P.D. Malvalia — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE

(DEPARTMENT OF AGRICULTURE & COOPERATION-SEEDS DIVISION)

1. Shri R.C.A. Jain — Additional Secretary
2. Shri Govindan Nair — Joint Secretary
3. Dr. P.L. Gautam — Director, NBPGR
4. Dr. R.P. Katiyar — ADG (Seeds), ICAR
5. Ms. Dolly Chakrabarty — Deputy Secretary
6. Dr. Sudhir Kochhar — Sr. Scientist

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS

(LEGISLATIVE DEPARTMENT)

1. Shri N.K. Nampoothiry — Deputy Legislative Counsel

2. The Hon'ble Chairman left the message to come late in the meeting and desired that in his absence some other member might preside. Accordingly under rule 258(3) of the Rules of Procedure & Conduct of Business in Lok Sabha, the members chose Shri Mahboob Zahedi, M.P. to preside over the meeting of the Committee.

3. Before the Committee proceeded to hear oral evidence of the representatives of farmers' organisations/associations/individuals, Shri Zahedi drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

4. The following representatives appeared and gave their suggestions to the Committee:—

- I. Prof. Anil K. Gupta, IIM, Ahmedabad.
- II. Citizens' Commission for National Issues, Delhi.
 - (i) Shri P.N. Lekhi, Senior Advocate, Supreme Court.
 - (ii) Dr. Y.P. Anand, Director, Gandhi Museum.
 - (iii) Shri B.K. Keayla.

III. Public Interest Legal Support and Research Centre (PILSARC), New Delhi.

- (i) Dr. Rajeev Dhavan, Director, PILSARC
- (ii) Shri Dayan Krishnan, Advocate
- (iii) Shri Anil Srivastav, Advocate
- (iv) Shri Amit Gupta, Researcher

5. At the end the Hon'ble Chairman appeared and got briefing from Dr. Rajeev Dhavan, Director, PILSARC who was the last witness to appear before the Committee.

6. A verbatim record of proceedings was kept.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF
PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1500 to 1615 hrs. on 8 May, 2000 in Committee Room 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

(*Lok Sabha*)

2. Shri G. Putta Swamy Gowda
3. Shri Jagannath Mallick
4. Dr. Ranjit Kumar Panja
5. Shri Nawal Kishore Rai
6. Shri Chandra Bhushan Singh

(*Rajya Sabha*)

7. Dr. A.R. Kidwai
8. Shri Yadlapati Venkat Rao
9. Prof. M. Sankaralingam
10. Dr. Biplob Dasgupta

SECRETARIAT

Shri P.D.T. Achary	— <i>Joint Secretary</i>
Shri Ram Autar Ram	— <i>Director</i>
Shri P.D. Malvalia	— <i>Under Secretary</i>

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE

(DEPARTMENT OF AGRICULTURE & COOPERATION-SEEDS DIVISION)

1. Shri Govindan Nair — Joint Secretary
2. Ms. Dolly Chakrabarty — Deputy Secretary
3. Shri R.K. Trivedi — Assistant Commissioner

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — *Deputy Legislative Counsel*

2. At the outset the Chairman welcomed the newly appointed members of the Rajya Sabha to the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999.

3. The Committee then discussed the amendments proposed to the existing clauses of the Bill based on Memoranda received from various associations/organisations/individuals.

4. The Chairman then drew the attention of the Members that the Committee had to present their Report to the House by the last day of the last week of the Budget Session, 2000 but it still had to consider a large number of Memoranda received from various organisations and also to complete various stages before the finalisation of the Report like (i) consideration of amendments likely to be received from members/Government on the various provisions of the Bill; (ii) Clause-by-clause consideration of the Bill; (iii) consideration and adoption of the draft Report; and (iv) appending of Minutes of dissent, if any, which might be given by the Members after finalisation of the Report.

5. In view of this the Committee unanimously decided to seek an extension of time for presentation of their Report to the House upto the last day of the last week of the Monsoon Session, 2000.

6. The Committee were also of the opinion that some important States like Kerala, J&K, Goa, Andaman & Nicobar Islands, Arunachal Pradesh, Meghalaya etc. were yet to be visited by them, from where the Committee could get useful information for making realistic amendments in the Protection of Plant Varieties and Farmers' Rights Bill, 1999.

The Committee then adjourned.

MINUTES OF THE FIFTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1600 to 1700 hrs. on 20 July, 2000 in Committee Room 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri G. Putta Swamy Gowda
3. Shri Suresh Ramrao Jadhav
4. Shri Raghuvir Singh Kaushal
5. Shri Jagannath Mallick
6. Shri Anna Saheb M.K. Patil
7. Shri Sharad Pawar
8. Shri Nawal Kishore Rai
9. Shri Ram Prasad Singh
10. Shri Mahboob Zahedi

Rajya Sabha

11. Dr. A.R. Kidwai
12. Shri Lalithbhai Mehta
13. Shri N.R. Dasari

SECRETARIAT

Shri P.D.T. Achary — *Joint Secretary*
Shri Ram Autar Ram — *Director*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION
SEEDS DIVISION)

1. Shri J.N.L. Srivastava — Special Secretary, DAC
2. Shri R.C.A. Jain — Additional Secretary
3. Dr. Mangla Rai — Deputy Director, ICAR
4. Shri Govindan Nair — Joint Secretary
5. Dr. G.D. Sharma — Acting Director, NBPGR
6. Dr. R.P. Katiyar — ADG, ICAR
7. Dr. S. Kochhar — Incharge, PGR, NBPGR
8. Ms. Dolly Chakrabarty — Deputy Secretary
9. Shri R.K. Trivedi — Assistant Commissioner

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999.

3. The Chairman then recalled that the Committee have to present their Report to the House by the last day of the last week of the Monsoon Session, 2000.

4. The Chairman thereafter informed the Members that taking into consideration a large number of Memoranda received from various associations/organisations/individuals and the views expressed by the representatives of the various associations/agricultural experts/individuals etc. during their evidence tendered before the Committee in New Delhi as well as during the study visits of the Committee in different parts of the country, the changes which were in the interest of our farmers' as well as our country have been made in the redrafted Bill, as shown in bold type and had been circulated to the members of the Committee. There are some minor corrections which are to be made. These would be made early and redrafted Bill would be circulated to the members of the Committee soon.

5. It was decided that the Committee would meet again on 27.7.2000, 3.8.2000 and 14.8.2000 for clause-by-clause consideration of the redrafted Bill and the adoption of the Report so that the Report of the Committee might be presented to the House in Monsoon Session of 2000.

The Committee then adjourned.

VI

MINUTES OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHT BILL, 1999

The Committee sat from 1600 to 1700 hrs. on 27 July, 2000 in Committee Room No. 139, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS
Lok Sabha

2. Shri G. Putta Swamy Gowda
3. Shri Raghveer Singh Kaushal
4. Dr. Ranjit Kumar Panja
5. Shri Sharad Pawar
6. Shri Nawal Kishore Rai
7. Shri Chandra Bhushan Singh
8. Shri Ram Prasad Singh
9. Shri Shanker Singh Vaghela
10. Shri Ummareddy Venkateswarlu
11. Shri Mahboob Zakedi
12. Shri Nitish Kumar

Rajya Sabha

13. Dr. A.R. Kidwai
14. Dr. M.N. Das
15. Shri Lalithbhai Mehta
16. Shri Kailash Joshi
17. Prof. M. Sankaralingam
18. Shri N.R. Dasari

SECRETARIAT

Shri Ram Autar Ram — *Director*

Shri P.D. Malvalia — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION
SEEDS DIVISION)

1. Dr. Mangla Rai	— Deputy Director, ICAR
2. Shri Govindan Nair	— Joint Secretary
3. Dr. G.D. Sharma	— Acting Director, NBPGR
4. Ms. Dolly Chakrabarty	— Deputy Secretary
5. Dr. S. Kochar	— Senior Scientist, NBPGR
6. Shri R.K. Trivedi	— Assistant Commissioner
7. Shri D.P. Singh	— Joint Manager, Seeds

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — Deputy Legislative Counsel
2. At the outset, the Chairman welcomed the members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999.

3. The Chairman then recalled that the Committee have to present their Report to the House by the last day of the last week of the Monsoon Session, 2000.

4. The Committee then had a detailed discussion on the redrafted Bill in which changes had been made taking into consideration the large number of Memoranda received from various associations/organisations/individuals and the views expressed by the representatives of the various associations/agricultural experts/individuals etc. during their evidence tendered before the Committee in New Delhi as well as during the study visits of the Committee in different parts of the country.

5. Some Members desired to hear the views/oral evidence of the representatives of various organisations in the light of redrafted Bill, before undertaking Clause-by-Clause consideration of the redrafted Bill and adoption of the Report.

6. It was therefore decided that the Committee would meet again to hear the oral evidence of various organisations on 3.8.2000, so that the Report of the Committee might be presented to the House in Monsoon Session of 2000.

The Committee then adjourned.

VII

MINUTES OF THE SEVENTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHT BILL, 1999

The Committee sat from 1500 to 1730 hrs. on 3 August, 2000 in Committee Room No. 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS *Lok Sabha*

2. Shri Ajay Chakraborty
3. Shri G. Putta Swamy Gowda
4. Shri Suresh Ramrao Jadhav
5. Shri Raghuveer Singh Kaushal
6. Dr. Ranjit Kumar Panja
7. Shri Sharad Pawar
8. Shri Shanker Singh Vaghela
9. Shri Ummareddy Venkateswarlu
10. Shri Mahboob Zahedi

Rajya Sabha

11. Dr. A.R. Kidwai
12. Shri Lalithbhai Mehta
13. Shri Ranjan Prasad Yadav
14. Dr. Biplab Dasgupta
15. Shri N.R. Dasari

SECRETARIAT

Shri P.D.T. Acharya — *Joint Secretary*
Shri Ram Autar Ram — *Director*
Shri P.D. Malvalia — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION SEEDS DIVISION)

1. Shri Bhaskar Barua — Secretary
2. Shri R.C.A. Jain — Additional Secretary
3. Shri Govindan Nair — Joint Secretary
4. Dr. G.D. Sharma — Acting Director, NBPGR
5. Ms. Dolly Chakrabarty — Deputy Secretary
6. Dr. R.P. Katiyar — ADG, ICAR
7. Shri R.K. Trivedi — Assistant Commissioner
8. Shri D.P. Singh — Joint Manager, Seeds
9. Dr. S. Kochhar — Senior Scientist

PRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — Deputy Legislative Counsel
2. At the outset, the Hon'ble Chairman welcomed the Members of the Joint Committee on the Protection Plant Varieties and Farmers' Rights Bill, 1999 to the sitting of the Committee and apprised the Committee about the progress of work so far done by them.

3. Thereafter some members drew attention of the Chairman to the fact that some of the provisions of the Bill might be overlapping/in repetition with some clauses of the (i) Biological Diversity Bill, 2000; and (ii) Patent (Second Amendment) Bill, 1999, which have been referred to the Departmentally related Committee of Rajya Sabha *i.e.* the Committee on (i) Commerce; and (ii) Committee on Science, Technology, Environment and Forests respectively. It was unanimously decided that the Committee should have a Joint Sitting with the Chairman and officers of these Committees, so that overlapping/repetition could be avoided.

4. Before the Committee proceeded to hear the oral evidence of the representatives of farmers' organisations/associations/individuals on the redrafted Bill, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

5. Then, the following representatives of the organisations/associations appeared and gave their suggestions to the Committee:—

- I. Dr. Vandana Shiva, Director, Navdanya, New Delhi.
- II. Shri B.K. Keayla, Managing Trustee, Centre for Study of Global Trade System & Development and Convenor, National Working Group on Patent Laws, New Delhi.
- III. Shri K.L. Jadhav, President, All India Kisan Sangh, Gandhi Nagar, Gujarat.
- IV. Shri P.S. Vatsa, President, (Delhi Pradesh) Bhartiya Kisan Sangh, Delhi.
- V. Dr. R.S. Paroda, Director General, ICAR, New Delhi.

6. A verbatim record of proceedings was kept.

The Committee then adjourned.

VIII

MINUTES OF THE EIGHTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1600 to 1645 hrs. on 9 August, 2000 in Committee Room No. 'D', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma

— *Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Shri G. Putta Swamy Gowda
4. Shri Raghuvir Singh Kaushal
5. Dr. Ramkrishna Kusmaria
6. Dr. Ranjit Kumar Panja
7. Shri Anna Saheb M.K. Patil
8. Shri Nawal Kishore Rai
9. Shri Chandra Bhushan Singh
10. Shri Ram Prasad Singh
11. Shri Mahboob Zahedi

Rajya Sabha

12. Shri Lalithbhai Mehta
13. Prof. M. Sankaralingam
14. Shri N. R. Dasari

SECRETARIAT

Shri Ram Autar Ram

— *Director*

Shri P.D. Malvalia

— *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION—SEEDS DIVISION)

1. Shri Bhaskar Barua	— Secretary
2. Shri R.C.A. Jain	— Additional Secretary
3. Dr. R.S. Paroda	— Director General, ICAR
4. Dr. Mangala Rai	— Deputy Director
5. Dr. G.D. Sharma	— Acting Director, NBPGR
6. Ms. Dolly Chakrabarty	— Deputy Secretary
7. Dr. R.P. Katiyar	— ADG, ICAR
8. Shri R.K. Trivedi	— Assistant Commissioner (Seeds)

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S. D. Singh — Deputy Legislative Counsel

2. At the outset, the Hon'ble Chairman Welcomed the Members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 to the sitting and apprised the Committee about the progress of work so far made by the Committee.

3. Thereafter, the Chairman drew the attention of the Members to the fact that the Committee had sent letters to all the State Governments/U.Ts. and Agricultural Universities inviting them for placing their further views on the Bill as redrafted by the Committee incorporating the desired comments/suggestions received from various organisations/associations/individuals etc. Out of that only representatives of Andhra Pradesh, Delhi, Gujarat and Maharashtra had come to present their views before the Committee.

4. Before the Committee proceeded to hear the views of the representatives on the redrafted Bill, the Chairman drew their attention to the provisions contained in Direction 58 of the Directions by the Speaker.

5. The following representatives appeared before the Committee and gave their suggestions:—

1. Dr. I.V. Subba Rao, Vice-Chancellor
Acharya N.G. Ranga Agricultural University, Hyderabad
2. Dr. P.K. Singh, Joint Director (Research)
Indian Agricultural Research Institute, New Delhi
3. Dr. P.K. Mishra,
Principal Secretary, (Agriculture)
Government of Gujarat
4. Dr. Mehta
Vice-Chancellor, Gujarat Agricultural University
5. Shri Gangani
Joint Director (Agriculture)
Govt. of Gujarat
6. Dr. R.D. Muley, Director
Agriculture, Pune,
Govt. of Maharashtra.
7. Dr. M.P.S. Kohli,
CIFE, Mumbai.

6. The Committee then decided to postpone their sitting fixed for 14.8.2000 and unanimously decided to hold it on 17.8.2000 for holding a discussion with the Chairmen of the Committees on (i) Biological Diversity Bill, 2000 (ii) Patent (Second Amendment) Bill, 1999; on the various clauses of these Bills which might be common to all the three bills to obviate chances of contradiction/overlapping.

7. A verbatim record of the proceedings was kept.

The Committee then adjourned.

IX

MINUTES OF THE NINTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 0900 to 0945 hrs. on 17 August, 2000 in Committee Room 'C', Ground Floor, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS
Lok Sabha

2. Dr. Baliram
3. Shri G. Putta Swamy Gowda
4. Shri Raghuvir Singh Kaushal
5. Shri Ram Prasad Singh
6. Shri Ummareddy Venkateswarlu

Rajya Sabha

7. Dr. A.R. Kidwai
8. Shri Lalithbhai Mehta
9. Dr. Biplab Dasgupta

SECRETARIAT — LOK SABHA

Shri P.D. Malvalia — *Under Secretary*

SECRETARIAT - RAJYA SABHA

1. Shri H. K. Chanana — *Director*
2. Shri Surinder Kumar Watts — *Deputy Secretary*
3. Shri M.K. Khan — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE

(DEPARTMENT OF AGRICULTURE & COOPERATION-SEEDS DIVISION)

1. Shri Bhaskar Barua — *Secretary*
2. Shri R.C.A. Jain — *Additional Secretary*
3. Dr. R.S. Paroda — *Director General, ICAR*
4. Shri Govindan Nair — *Joint Secretary*
5. Dr. J.L. Karihalo — *Officiating Director, NBPGR*
6. Dr. R.P. Katiyar — *ADG (Seeds), ICAR*
7. Ms. Dolly Chakrabarty — *Deputy Secretary (Seeds)*
8. Shri R. K. Trivedi — *Assistant Commissioner (Seeds)*

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

Shri S.D. Singh — *Deputy Legislative Counsel*

REPRESENTATIVES OF THE MINISTRY OF ENVIRONMENT AND FOREST

1. Shri R.H. Khwaja — *Joint Secretary*
2. Dr. G.V. Sarat Basu — *Joint Director*

2. At the outset, the Hon'ble Chairman welcomed Shri C. Ramachandraiah and Shri T.N. Chaturvedi, Chairmen of the Joint Committee on the Biological Diversity Bill, 2000 and Joint Committee on Patent (Second Amendment) Bill, 1999 respectively as well as the Members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 to the sitting and apprised the Committee about the progress of work so far made by the Committee.

3. Thereafter, the respective Chairmen put forth their views about the possibility of common clauses in the three Bills. It was unanimously agreed that the officials of the Ministries concerned with these Bills should sit together and examine the contradictory/overlapping clauses and report the matter to the Committee so as to avoid contradiction/overlapping if any.

4. The Committee desired that the matter, thereafter be discussed at the next sitting of the Committee on 21.8.2000 where the respective Chairmen may also be invited to be present.

The Committee then adjourned.

X

MINUTES OF THE TENTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT
VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 0900 to 0945 hrs. on 21 August, 2000 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri Raghuveer Singh Kaushal
3. Dr. Ramkrishna Kusmaria
4. Shri Anna Saheb M.K. Patil
5. Shri Sharad Pawar
6. Shri Mahboob Zahedi

Rajya Sabha

7. Dr. A.R. Kidwai
8. Dr. M.N. Das
9. Dr. Biplob Dasgupta

SECRETARIAT-LOK SABHA

Shri Ram Autar Ram — *Director*
Shri P.D. Malvalia — *Under Secretary*

SECRETARIAT-RAJYA SABHA

1. Shri H.K. Chanana — *Director*
2. Shri Surinder Kumar Watts — *Deputy Secretary*
3. Shri M.K. Khan — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF
AGRICULTURE AND COOPERATION-SEEDS DIVISION)

1. Shri Bhaskar Barua — *Secretary*
2. Shri R.C.A. Jain — *Additional Secretary*
3. Dr. P.L. Gautam — *Director, NATP (ICAR)*
4. Shri Govindan Nair — *Joint Secretary*
5. Dr. G.D. Sharma — *Acting Director, NBPGR*
6. Ms. Dolly Chakrabarty — *Deputy Secretary (Seeds)*
7. Shri R.K. Trivedi — *Assistant Commissioner (Seeds)*

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

Shri S.D. Singh — *Deputy Legislative Counsel*

2. At the outset, the Hon'ble Chairman welcomed the Members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 to the sitting and apprised the Committee about the progress of work so far made by the Committee.

3. Thereafter the Chairman informed the Members of the Committee that the officials of the Ministries concerned with Biological Diversity Bill, 2000 and Patent (Second Amendment) Bill, 1999 Bills had examined the possibility of common clauses in the three Bills and concluded that there were no contradictory/overlapping clauses except only few clauses in the Biological Diversity Bill which would require slight rewording to bring more specificity and clarity in the legislation. These changes can be suitably incorporated in the Biological Diversity Bill which at the moment is at the initial stage of examination.

4. For want of quorum the Committee decided to postpone the clause by clause consideration of the Bill to the next sitting of the Committee today i.e. on 21.8.2000 at 1700 hrs.

The Committee then adjourned.

XI

MINUTES OF THE ELEVENTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 1700 to 1805 hrs. on 21 August, 2000 in Committee Room 'E', Basement, Parliament House Annex, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri G. Putta Swamy Gowda
3. Shri Suresh Ramrao Jadhav
4. Dr. Ramkrishna Kusmaria
5. Shri Nawal Kishore Rai
6. Shri Mahboob Zahedi
7. Shri Chandra Bhushan Singh

Rajya Sabha

8. Dr. A.R. Kidwai
9. Dr. M.N. Das
10. Dr. Biplab Dasgupta
11. Shri N.R. Dasari

SECRETARIAT — LOK SABHA

Shri Ram Autar Ram — *Director*
Shri P.D. Malvalia — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION—SEEDS DIVISION)

1. Shri Bhaskar Barua — Secretary
2. Shri R.C.A. Jain — Additional Secretary
3. Dr. P.L. Gautam — Director, NATP (ICAR)
4. Shri Govindan Nair — Joint Secretary
5. Dr. G.D. Sharma — Acting Director, NBPGR
6. Ms. Dolly Chakrabarty — Deputy Secretary (Seeds)
7. Shri R.K. Trivedi — Assistant Commissioner (Seeds)

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — Deputy Legislative Counsel

2. At the outset, the Hon'ble Chairman welcomed the Members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 to the sitting and apprised the Committee about the progress of work so far made by the Committee.

3. Thereafter, the Committee took up Clause-by-Clause consideration of the redrafted Bill. A member of the Committee wanted the removal of the reference of Article 27.3(b) of TRIPs from the Preamble of the redrafted Bill. It was also desired to reduce the duration of Protection of Plant Varieties to 9—12 years instead of 15—18 years. After a long discussion, the Committee asked the Ministry of Agriculture to prepare notes on the above mentioned two issues explaining the present position and implications so that the Committee could decide upon them in their next meeting to be held on 22.8.2000. Since most of the amendments given by the members were already incorporated in the redrafted Bill, the remaining amendments were withdrawn by the members after convincing discussion.

The Committee then adjourned.

XII

MINUTES OF THE TWELFTH SITTING OF THE JOINT COMMITTEE ON THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS BILL, 1999

The Committee sat from 0900 to 1000 hrs. on 22 August, 2000 in Committee Room 'B', Ground Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Sahib Singh Verma — *Chairman*

MEMBERS

Lok Sabha

2. Shri Ajay Chakraborty
3. Dr. Ramkrishna Kusmaria
4. Shri Jagannath Mallick
5. Shri Annasaheb M.K. Patil
6. Shri Sharad Pawar
7. Shri Ram Prasad Singh
8. Shri Mahboob Zahedi

Rajya Sabha

9. Dr. A.R. Kidwai
10. Dr. Biplab Dasgupta
11. Shri N.R. Dasari

SECRETARIAT — LOK SABHA

Shri P.D.T. Achary	— <i>Joint Secretary</i>
Shri Ram Autar Ram	— <i>Director</i>
Shri P.D. Malvalia	— <i>Under Secretary</i>

REPRESENTATIVES OF THE MINISTRY OF AGRICULTURE (DEPARTMENT OF AGRICULTURE & COOPERATION — SEEDS DIVISION)

1. Shri Bhaskar Barua — *Secretary*
2. Shri R.C.A. Jain — *Additional Secretary*
3. Dr. P.L. Gautam — *Director, NATP (ICAR)*
4. Shri Govindan Nair — *Joint Secretary*
5. Dr. R.P. Katiyar — *ADG (Seeds)*
6. Ms. Dolly Chakrabarty — *Deputy Secretary (Seeds)*

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS (LEGISLATIVE DEPARTMENT)

1. Shri S.D. Singh — *Deputy Legislative Counsel*

2. At the outset, the Hon'ble Chairman welcomed the Members of the Joint Committee on the Protection of Plant Varieties and Farmers' Rights Bill, 1999 to the sitting.

3. Thereafter, the Committee discussed the notes (Annexures—I & II) prepared by the Ministry of Agriculture on the implications of the reference of Article 27.3(b) of TRIPS in the Preamble of the redrafted Bill and on the duration of Protection of a Plant Variety under clause 24(6)(i) to (iii) of the Bill. However, a Member was not satisfied with the position as clarified by the Ministry and decided to give a note of dissent.

4. The Committee then considered and adopted the draft Report and the re-drafted Bill.

5. The Chairman then drew the attention of the Members of the Committee to the provisions contained in Direction 87 of the Directions by the Speaker regarding Minutes of Dissent and announced that the Minutes of Dissent, if any, might be sent to the Lok Sabha Secretariat by 1700 hours on 22.8.2000 (today).

6. The Committee authorised the Chairman and in his absence Shri Annasaheb M.K. Patil, MP to present the report and lay the record of evidence on the Table of the House on 24.8.2000.

7. The Committee also authorised Shri A.R. Kidwai, MP and in his absence Shri Lalithbhai Mehta, MP to lay the Report and the record of evidence on the Table of Rajya Sabha on 24.8.2000.

8. The Committee placed on record their appreciation for the cooperation and assistance rendered by the legislative counsel of the Ministry of Law, Justice & Company Affairs (Legislative Department), Officers of the Ministry of Agriculture (Department of Agriculture and Cooperation — Seeds Division), Officers/Scientists of DARE & ICAR, representatives of the various organisations/associations/individuals/Agricultural Universities/ Scientists etc.

9. The Committee also placed on record their appreciation and thanks to the officers and staff of the Lok Sabha Secretariat for their hard work and valuable assistance rendered by them to facilitate the work of the Committee in all matters and in preparing their draft Report promptly.

10. The Chairman while associating himself in thanking the above mentioned officers, also thanked the members of the Committee for extending their full cooperation to him in conducting the proceedings of the Committee in most congenial atmosphere.

11. The members of the Committee also placed on record their high appreciation and thanks to the Chairman (Shri Sahib Singh Verma) for very ably and impartially conducting the proceedings of the Committee and guiding their deliberations at various stages of the Bill.

The Committee then adjourned.

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